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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 62

CHARLES B. MORRIS, APPELLANT,

vs.

PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED MARCH 16, 1946.

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IN THE SUPREME COURT OF ILLINOIS, MARCH TERM, A. D. 1945

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, (Respondent) Appellee,

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, CHARLES N. ACKERMAN, et al., (Respondents) Appellees,

CHARLES B. MORRIS, (Claimant) Appellant

Appeal from Superior Court of Cook County

Honorable Ulysses S. Schwartz, Judge Presiding.

Abstract of Record—Filed February 20, 1945

PETITION

Petition filed February 9, 1938 under Article XIII of the Illinois Insurance Code by People of the State of Illinois upon relation of Ernest Palmer, Director of Insurance, by Otto Kerner, Attorney General, alleging:

That the respondent, Chicago Lloyds, was organized February 3, 1928, under the statute approved July 11, 1927, [fol. 10] regulating and controlling insurance assumed by partnerships, unincorporated associations, individuals or aggregations of individuals as underwriters known and operating as Lloyds, to tranact the business of fire • • • insurance; and on said date, Associated Underwriters, Inc. was licensed as Attorney-in-Fact for respondent for the transaction of its business by the Department of Trade and

Commerce (now the Department of Insurance) of the State of Illinois, and from the time of its said organization and authorization, respondent has been engaged in Illinois in the transaction of fire • • • insurance business.

In addition to being authorized to transact business in Illinois, respondent has been authorized to and is conducting business in other States and territories. The management of respondent is vested in Associated Underwriters, Inc., a corporation organized and existing under the laws of the State of Illinois, which acts and operates as Attorney-in-Fact for respondent.

Respondent is insolvent. Its total admitted assets aggregate not to exceed $1,507,700.07 and its total liabilities aggregate in excess of $1,203,512.17, leaving a surplus to policyholders of only $304,187.90, whereas Section 99 of the Illinois Insurance Code, under which respondent has been operating since July 1, 1937, required it to keep and maintain in Illinois admitted assets, including the deposits of underwriters required by Section 97 of said Code, exceeding all outstanding claims and other liabilities plus the earned premium (less reinsurance premiums and less the commissions actually paid on policies written prior to the [fol. 11] effective date of said Code) on policies in force, of not less than $500,000.00. Said admitted assets of respondent are made up of the following items (listing same) and the liabilities of respondent are composed of the following items (listing same).

Relator, as Director of Insurance, has found respondent to be insolvent and in such condition that its further transaction of business would be hazardous to its policyholders, its creditors and the public and in such condition that it cannot meet the requirements for organization and authorization as required by law. He has found it has violated its charter and the laws of this State by continuing its operations without having the surplus required by law and has reported the case to the Attorney General with instructions to apply forthwith for an order directing respondent to show cause why an order to liquidate it should not be entered as provided by Article XIII of the Illinois Insurance Code.

Petitioners pray that Chicago Lloyds appear and answer the complaint within a short day to be fixed by the court and show cause why an order should not be entered finding that sufficient cause exists for the liquidation of Chicago

Lloyds, directing relator as Director of Insurance to take possession of its property, business and affairs and to liquidate the same in accordance with the provisions of the Insurance Code; that a certified copy of such order to show cause be served upon Associated Underwriters, Inc. Attorney-in-Fact for Chicago Lloyds and upon the return day an order be entered as prayed and for other and further relief as equity may require and to the Court shall seem meet.

[fol. 12] ENTRY OF APPEARANCE, ETC.

Entry of appearance and consent filed February 9, 1938, by Chicago Lloyds, by Associated Underwriters, Inc., its Attorney-in-Fact. Waives service of an order to show cause why a decree should not be entered finding that sufficient cause exists for the liquidation of Chicago Lloyds; consents and agrees to the immediate entry of a decree finding that sufficient cause exists for such liquidation and directing said Director of Insurance pursuant to the said provisions of the Illinois Insurance Code to take possession of the books, records, property, assets and affairs of said Chicago Lloyds and to liquidate the same under the direction of the court in accordance with the statute.

DECREE

Decree entered February 9, 1938. Recites filing of petition; and it further appearing to the Court that on February 9, 1938, at a meeting of the Board of Directors of Associated Underwriters, Inc., Attorney-in-Fact for Chicago Lloyds, a resolution was adopted consenting to the entry of an order in this cause finding that sufficient cause exists for the liquidation of Chicago Lloyds and consenting to its liquidation by said Director of Insurance, pursuant to the provisions of Article XIII of the Illinois Insurance Code; and a certified copy of said resolution having been exhibited to the court and presented with the petition of the petitioners herein; and respondent having filed herein, through its said Attorney-in-Fact, a written entry of appearance and consent to the immediate entry of a decree in this cause, finding that sufficient cause exists for the liquidation of Chicago Lloyds; and the court having examined the verified petition, the entry of appearance and consent, and the exhibits, finds that it has jurisdiction of the subject mat-
[fol. 13] ter and of the parties and that the equities are in

favor of petitioners. The court makes findings of fact finding each of the facts alleged in the petition.

It is therefore ordered, adjudged and decreed that sufficient cause exists for the liquidation of Chicago Lloyds and that relator, Ernest Palmer, Director of Insurance of Illinois, take immediate possession of the books, records, property, business and affairs of respondent and liquidate same in accordance with the provisions of the Insurance Code.

It is further ordered, adjudged and decreed, that Chicago Lloyds, its underwriters, Associated Underwriters, Inc., its Attorney-in-Fact and all officers, agents, directors and employees of said Chicago Lloyds and said Associated Underwriters, Inc., and all other persons, are hereby restrained and enjoined from in any manner interfering with the possession of said Director of Insurance, his employees, subordinates, agents or representatives, in or to the books, records or property of respondent, or with the liquidation of such business, and from transacting any company business or disposing of respondent's property, assets, books or records until the further order of the court.

It is further ordered, adjudged and decreed that the rights and liabilities of Chicago Lloyds and of its creditors (except those holding contingent claims) and of its policyholders, underwriters and all other persons interested in its assets are fixed as of 12 o'clock noon, Central Standard Time, February 15, 1938; that all creditors and other persons having claims against said Chicago Lloyds are immediately enjoined and restrained from instituting any suit or [fol. 14] proceeding intended for the purpose of obtaining a judgment against Chicago Lloyds, from having any execution issued against it upon any judgment heretofore entered against it, from taking any action which would or might interfere with the liquidation or relator's possession and control or title, right or interest in or to the business or property of Chicago Lloyds, from in any manner interfering with the conduct of said liquidation by relators, and all persons are hereby immediately restrained and enjoined from obtaining or attempting to obtain preferences, judgments, attachments or other like liens, and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in the possession and control of relator and until the further order of the court.

Petition by Director of Insurance for order fixing time and procedure for filing claims.

ORDER

Order entered February 15, 1938 that claims be filed with the Special Deputy of the liquidator and fixing date for filing claims, that notice thereof be given by publication, that liquidator examine into and investigate claims filed and report his recommendation as to whether they shall be allowed in whole or in part or disallowed and that upon the filing of such report and objections thereto, the court shall take such further action as justice may require and to equity shall appertain.

PETITION

Petition filed June 24, 1938 by the People of the State of Illinois upon relation of Ernest Palmer, Director of Insurance of Illinois, and Ernest Palmer as liquidator of Chicago Lloyds, to join (1) the individual underwriters [fol. 15] at Chicago Lloyds, (2) Associated Underwriters, Inc., a corporation, (3) City National Bank and Trust Company of Chicago, Trustee, and (4) "Unknown Owners", as respondents in this cause.

Recites various of the steps taken in the proceeding and that the liquidator took possession of the assets and business of Chicago Lloyds, and the various steps in the organization and operation of Chicago Lloyds and acts of Associated Underwriters, Inc. as attorney in fact for the individual underwriters and the appointment of City National Bank and Trust Company of Chicago, as trustee for the deposit in trust of cash or securities made by the individual underwriters at Chicago Lloyds.

Joins as respondents under the name of "Unknown Owners", other parties (other than those listed in Exhibit "D") having or claiming any interest in said trust deposits.

Alleges deficit in the underwriting account of each underwriter and that the trust deposits of cash or securities, or both, now held by said trustee are assets of Chicago Lloyds to be administered in said cause pursuant to the provisions of the Illinois Insurance Code and the direction and orders of this court.

Attaches to the petition the following exhibits:

Exhibit "A". Power of attorney from individual underwriters to Associated Underwriters, Inc., in effect from April 1, 1937.

Exhibit "B". Like power of attorney in effect prior to April 1, 1937. (Not abstracted here. See Abst. 49.)

Exhibit "C". Agreement dated August 19, 1937, between City National Bank and Trust Company of Chicago [fol. 16] and Associated Underwriters, Inc., superseding earlier agreement and appointing said Bank and Trust Company successor trustee for said deposits in trust made by individual underwriters.

Exhibit "D", being a true and correct schedule of all individual underwriters at Chicago Lloyds who have cash or securities deposited with said trustee or who have any other remaining interests in the business and affairs of Chicago Lloyds.

Affidavit as to unknown persons filed June 24, 1938.

ORDER

Order entered June 24, 1938 joining as respondents in this cause each of the individual underwriters at Chicago Lloyds named in Exhibit "A" attached to the order, "Unknown Owners", Associated Underwriters, Inc., and City National Bank and Trust Company of Chicago, as trustee, ordering that summons issue and requiring each respondent to file answer to said petition or otherwise make appearance therein. Exhibit "A" is identical with Exhibit "D" attached to petition of June 24, 1938 (Rec. 67).

ANSWERS

Answer of Benjamin F. Affleck and of thirty-one other underwriters to petition of June 24, 1938.

Answer of Associated Underwriters, Inc. to petition of June 24, 1938.

Answer of B. F. Andrews and nine other underwriters, to petition filed June 24, 1938.

Answer of Fannie Muir Turnbull and sixty-six other underwriters to petition of June 24, 1938.

[fol. 17] Answer of City National Bank and Trust Company of Chicago, individually and as trustee, to petition filed June 24, 1938 and amendment to said answer.

Affidavit of non-residence.

Order entered November 27, 1940 spreading of record resignation of Ernest Palmer as Director of Insurance and appointment and qualification of C. Hayden Davis as

such Director of Insurance and as liquidator of respondent.

Certificate of mailing.

Certificate of publication as to "Unknown Owners" and non-resident respondents.

Order spreading of record herein and making part of the proceedings the resignation of C. Hayden Davis as Director of Insurance of the State of Illinois and the appointment and qualification of Paul F. Jones as Director of Insurance and as liquidator of respondent.

Order striking the name of Ernest Palmer from the entitling of the cause and inserting in lieu thereof the name of Paul F. Jones, and that said cause proceed under the amended entitling.

Liquidator's Tenth Report

Liquidator's tenth report on claims filed June 10, 1942. Report as to the allowance or disallowance of various claims, and states that included in Schedule "B" attached hereto is Claim No. L-9554 of Charles B. Morris, which is not based upon any insurance policy or insurance risk underwritten by Chicago Lloyds, but arises from a claim of Charles B. Morris for alleged false arrest and malicious prosecution and conversion of certain personal property by [fol. 18] agents and employees of Chicago Lloyds, and is based in part upon a judgment entered by default in the Circuit Court of the City of St. Louis, State of Missouri, on or about April 7, 1941, and subsequent to the entry of the order of liquidation and in violation of the injunction order entered in this cause on February 9, 1938, and subsequent to the claim date set by order of court in these proceedings.

Schedule "B" lists a number of claims including the following: Claim No. L-9554—Name of claimant, Charles B. Morris—Amount claimed, $112,500.00—Amount recommended, None.

Objections

Objections by Charles B. Morris to that portion of the liquidator's tenth report recommending disallowance of the claim of Charles B. Morris, for grounds and reasons for objection and exception states:

That Chicago Lloyds, for many years prior to the appointment of liquidator and during and prior to and subsequent to the year 1932, was a voluntary and unincorporated aggregation of individuals, doing business under

the name "Chicago Lloyds" and engaged in writing insurance in the State of Missouri and elsewhere under the so-called Lloyd's plan of writing insurance; that said individuals by power of attorney appointed Associated Underwriters, Inc. to act for them in all matters pertaining to writing insurance in the name of "Chicago Lloyds", collecting premiums and paying losses thereunder and to obtain consent and authority of the said several States of the United States to engage in said insurance business in such States, and authorized said Associated Underwriters, Inc. to [fol. 19] receive and admit service of process in any suit at law or equity brought upon, or by reason of the issuance of such policy and to cause an appearance to be entered on behalf of the individual members of such "Chicago Lloyds" in any such suit.

* * * * * * *

That thereafter, for the purpose of engaging in insurance business in the State of Missouri, said Associated Underwriters, Inc., as such attorney in fact, in accordance and compliance with the laws of Missouri filed with the Insurance Department of the State of Missouri a certified copy of said power of attorney and was granted a right to so transact said business by the State of Missouri; that, in compliance with the mandatory laws of the State of Missouri, it filed in the office of the Insurance Department of Missouri an appointment designating the Superintendent of Insurance to acknowledge or receive service of process and consenting that service of process upon said Superintendent should be taken and held as valid as if served personally upon Chicago Lloyds and upon each individual composing Chicago Lloyds and to constitute personal service upon Chicago Lloyds and upon each said individual so composing it, as long as it shall have any policies or liabilities outstanding in Missouri, even though such aggregation might have been withdrawn, been excluded from, or ceased doing business in Missouri, all as provided by the Missouri law.

That for a number of years thereafter, and in the years 1932 and 1933, said Chicago Lloyds transacted an insurance business in Missouri, issued a great number of policies of insurance and collected a large number of premiums, acting [fol. 20] under said power of attorney to said Associated Underwriters, Inc., and caused agencies to be established

for the transaction of its said business under said power of attorney in various sections of Missouri; that among the agents so appointed; Chicago Lloyds, by and through Associated Underwriters, Inc., employed and entered into a written contract with the claimant, Charles B. Morris, on February 8, 1929, appointing him as an agent for the writing of insurance in Missouri, with authority to collect premiums due therefrom, and he, for a number of years thereafter, continued to act as its agent and was so acting at the dates hereinafter stated.

That thereafter, in the months of October, November and December, 1932, said Chicago Lloyds and said Associated Underwriters, Inc., attorney in fact for said Chicago Lloyds, caused plaintiff, Charles B. Morris, to be falsely arrested and falsely and maliciously prosecuted on a false charge of embezzlement of premiums collected as its agent; that there was subsequently a trial on said charges and upon the evidence adduced the court found that there was no basis for said charge and directed a verdict in favor of said Charles B. Morris and acquitted him of said charge.

That thereafter, Charles B. Morris instituted a suit in the Circuit Court of the City of St. Louis, Missouri, for said false and malicious prosecution, against Chicago Lloyds and Associated Underwriters, Inc., and their agent, Robert A. Roessel, said Circuit Court of the City of St. Louis being a court of record and having jurisdiction of the subject matter of said suit, obtained personal service upon said Associated Underwriters, Inc., attorney in fact of said [fol. 21] Chicago Lloyds, and upon said Robert A. Roessel, a resident of Missouri, and obtained service upon Chicago Lloyds by serving the Superintendent of Insurance of Missouri in accordance with and as provided for by the laws of the State of Missouri and by said appointment hereinabove referred to, which had been filed with the Insurance Department of Missouri; that thereafter said Chicago Lloyds and Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, filed a petition and removed said cause from the Circuit Court of the City of St. Louis to the District Court of the United States for the Eastern Division of the Eastern District of Missouri;

That thereafter Morris filed in said United States District Court a motion to remand the said cause to the Circuit Court of the City of St. Louis, which was denied; that thereafter said Chicago Lloyds and Associated Under-

writers, Inc. and Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, and Robert A. Roessel filed their several pleas to the jurisdiction, claiming that neither Chicago Lloyds nor Associated Underwriters, Inc. were doing business in Missouri at the times stated in said petition of Charles B. Morris, and also filed special demurrers, all of which were denied and overruled by the court; and thereafter said defendants filed answers denying jurisdiction and also pleading to the merits of the cause.

That thereafter Morris filed in said Federal Court another motion to remand, which was sustained by the court; and on the 7th day of January, 1938, said cause was remanded by order of the Federal Court to the Circuit Court of the City of St. Louis for trial.

[fol. 22] That thereafter, on to-wit, February 9, 1938, Chicago Lloyds was placed in liquidation by order of this court and the liquidator notified Morris of the institution of said liquidation proceedings and directed him to file with liquidator any claim he might have against Chicago Lloyds; that thereafter and within the time specified, Morris filed with liquidator a statement of his said claim, attached thereto a copy of the petition above referred to and reciting the fact that said cause was pending in the Circuit Court of the City of St. Louis and notified liquidator that as soon as the same had been tried and the claim liquidated and reduced to judgment, he would file a supplemental and amended claim.

That thereafter said cause was set for trial before said Circuit Court and a judgment rendered against Chicago Lloyds and Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, for $50,000.00, with interest at 6% from the date of said judgment until paid, the Circuit Court of the City of St. Louis expressly finding that it had jurisdiction of said defendants and of the subject matter; that thereafter, about August 1, 1941, Morris caused to be filed with liquidator an amended and supplemental claim, attaching thereto a certified copy of said judgment and of the said entire judgment roll of the proceedings hereinabove referred to and recited.

That Morris was never notified of any date for the hearing of said claim before said liquidator; that he received notice on June 19, 1942 of the fact that liquidator had filed his tenth report and had reported adversely on the allowance of his claim and the sole and only ground or reason

[fol. 23] for the recommendation of disallowance of said claim, as shown by said report and recommendation of liquidator, is the fact that in and by the order appointing him this court issued an injunction restraining the institution of suits, etc., which said liquidator assumed and reports as binding on the claimant Charles B. Morris, a non-resident of Illinois and a resident of the State of Missouri.

Claimant states and represents that in and by his recommendations for disallowance of said claim, liquidator erred, as follows:

That there has been no hearing upon said claim before said liquidator, and said recommendation of disallowance is entirely *ex parte*.

That said claim and supplemental and amended claim were properly filed.

That, in and by said recommendation of liquidator, he has failed to give said judgment of the Circuit Court of the City of St. Louis, State of Missouri, that full faith and credit to which it is entitled by reason of the provisions of Article IV, Section I of the Constitution of the United States.

That liquidator has given improper and unlawful extra-territorial effect to the injunctive order made by the court and failed to find or state or make known to this court in his recommendations that claimant, a non-resident of Illinois, instituted his suit against Chicago Lloyds in the year 1934, long prior to the appointment of liquidator, that said suit was pending and was being defended by Chicago Lloyds in said Circuit Court after having been removed therefrom to the United States District Court and remanded for trial to said Circuit Court by said District Court and after service of process as hereinabove stated.

[fol. 24] That said claim having been merged into a judgment against Chicago Lloyds by the Circuit Court of the City of St. Louis, State of Missouri, which had jurisdiction of the subject matter of said suit and of the person of defendant, Chicago Lloyds, and of which a copy, properly certified under the Acts of Congress, was duly and properly filed with liquidator as claimant's amended and supplemental claim, should have been recommended for allowance instead of disallowance.

Prays the court to order and direct upon a final hearing that said claim be allowed; that this court grant to claimant

the protection of the provisions of the Constitution of the United States and that full faith and credit be given to said judgment of the Circuit Court, and likewise that claimant, as a citizen of the State of Missouri, be granted the privileges and immunities of the citizens of the State of Illinois, as guaranteed by Article IV, Section 2 of the Constitution of the United States and that this court likewise shall not enforce any law of the State of Illinois which shall abridge the privileges of the claimant as a citizen of Missouri and of the United States or deny to him, as such citizen of Missouri, the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution by Section I thereof, and further that he shall have the benefit and protection of the Sixth Amendment to the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions of the Constitution of the United States and the laws of the United States made under and pursuant thereof.

ORDER OF REFERENCE

Order that claim No. L-9554 of Charles B. Morris, the recommendations of liquidator with respect thereto con-
[fol. 25] tained in his tenth report on claims and the objections of claimant filed thereto, be referred to L. A. Wescott, Esq., Master in Chancery of this court for hearing and that said Master after hearing and considering said claim, recommendation and objections, report to this court (the Superior Court) concerning his findings with respect thereto.

ORDER RE OBJECTIONS

Order granting leave to said Master to file instanter his report dated May 20, 1944 on said claim of Charles B. Morris and ordering that the objections filed by Morris and the objections filed by certain underwriters to said Master's report and recommendations therein with respect to said claim stand as exceptions to said report and recommendations contained therein and setting the matter for hearing.

AMENDED REPORT

Report (Amended) of Master in Chancery, Llewellyn A. Wescott, filed June 16, 1944, as follows:

That he took testimony of witnesses produced and the same, together with certain documents thereupon offered

and received in evidence upon behalf of the parties is returned as part of his report; that objections were filed to his report which were argued before him and are herewith returned, together with his ruling thereon and the exhibits in said cause filed in separate folder, each identified as such by mark of identification, and the entire folder identified by the word "Exhibits". He reports in accordance with his rulings upon said objections, as follows:

"The Facts as Summarized by the Master From Evidence Submitted, Both Oral and Documentary."

[fol. 26] 1. That Chicago Lloyds, an unincorporated association, was on February 3, 1928, and prior thereto, under and by virtue of the laws of Illinois, organized and authorized to transact insurance business under the Lloyds plan in Illinois and in other States upon compliance with the laws of such other States, and that the underwriters of Chicago Lloyds as at December 31, 1932, were the persons listed on Claimant's Exhibit 15, and as at December 31, 1936, were the persons listed on Claimant's Exhibit 16.

2. That on said February 3, 1928, Associated Underwriters, Inc., was licensed as attorney in fact for said Chicago Lloyds for the transaction of its business by the Department of Trade and Commerce (now the Department of Insurance) of the State of Illinois (Claimant's Exhibit 1), and that at all times after the organization of Chicago Lloyds and until February 9, 1938, Associated Underwriters, Inc. acted as attorney in fact for Chicago Lloyds.

3. That from the date of its said organization and authorization said Chicago Lloyds has been engaged in Illinois in the transaction of insurance business.

4. That on February 29, 1932 it filed an application with the Insurance Department of the State of Missouri for a license or certificate of authority authorizing and empowering it to tranact insurance business in Missouri and that said Superintendent issued a certificate of authority dated March 1, 1932, certifying that it was authorized to do an insurance business in Missouri until March 1, 1933, and that on similar application said Superintendent issued a similar certificate dated March 1, 1934 effective until March 1, 1935.

[fol. 27] 5. That claimant's Exhibit one (1) is a copy of the power of attorney in use prior to 1937 and was the form of power of attorney executed by each individual underwriter of Chicago Lloyds in appointing Associated Underwriters, Inc., its attorney for the transaction of its insurance business, and that a copy of said power of attorney was filed with the Superintendent of Insurance of the State of Missouri.

6. That on to-wit, August 24, 1934, Morris brought suit in the Circuit Court of the City of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., as attorney in fact for said Lloyds, and also as an individual defendant, and also against Robert S. Roessell, for the malicious prosecution and false arrest of Morris on a charge of embezzling the funds of Chicago Lloyds while acting as its agent (Claimant's Exhibit 2).

7. That writs of summons were issued for service on defendants; that one was served on August 25, 1934 on Chicago Lloyds by delivering a copy thereof and of the petition to the Superintendent of Insurance and the summons and petition so delivered were transmitted to Chicago Lloyds on August 25, 1934; that summons was served on Associated Underwriters, Inc., individually and as attorney in fact and also upon said Roessell; and that said writs were duly returned with the return of service made thereon.

8. That thereafter Chicago Lloyds filed its petition for removal and said cause was removed to the District Court of the United States in the Eastern District of Missouri, Eastern Division.

9. That thereafter Morris moved to remand said cause to said Circuit Court and the motion was denied.

[fol. 28] 10. That thereafter said Associated Underwriters, Inc. and said Chicago Lloyds by plea and demurrer questioned the jurisdiction of the court over said defendants and said plea and demurrer were overruled; that thereafter said Chicago Lloyds and said Associated Underwriters, Inc., attorney in fact for it, each filed a separate answer on the merits.

11. That thereafter Morris filed in said Federal Court a motion for reconsideration of his motion to remand and

on January 7, 1938 said cause was duly remanded to said Circuit Court of the City of St. Louis.

12. That on to-wit, February 9, 1938, the People of the State of Illinois on relation of the Director of Insurance filed their petition in the Superior Court of Cook County praying for the entry of an order finding that sufficient cause existed for the liquidation of said Chicago Lloyds, which is the proceeding now before the court).

13. That thereafter on February 9, 1938, a decree was entered herein directing the Insurance Director to take immediate possession of the books, etc. of Chicago Lloyds and liquidate the same in accordance with the provisions of the Insurance Code of Illinois.

14. That the decree herein contains an injunctive order which restrains all persons from in any manner interfering with the possession of the said Director in or to the books, records or property of Chicago Lloyds or with the liquidation of its business until the further order of the court; that it ordered that the rights and liabilities of Chicago Lloyds and its policyholders, underwriters, creditors (ex-
[fol. 29] cept those holding contingent claims), and of all other persons be fixed as of 12:00 o'clock noon February 15, 1938 and that all creditors and other persons having claims against said Chicago Lloyds be and they are hereby immediately enjoined and restrained from instituting any suit or proceedings intended for the purpose of obtaining a judgment against Chicago Lloyds, and from having any execution issued against said Chicago Lloyds upon any judgment heretofore entered against said Chicago Lloyds, and said creditors and claimants and all other persons are hereby immediately restrained and enjoined from taking any action which would or might interfere with the liquidation of said Chicago Lloyds or with the relator's possession and control or title, right or interest in or to the business or property of the said Chicago Lloyds, and from in any manner interfering with the conduct of said liquidation by relator, and all persons are hereby immediately restrained and enjoined from obtaining or attempting to obtain preferences, judgments and attachments or other like liens, and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in the possession and control of relator and until the further order of the court.

15. That thereafter said Director of Insurance gave notice to all creditors of Chicago Lloyds to present their claims and Morris received such notice (Liquidator's Exhibit 1).

16. That thereafter, and within the time fixed, claimant filed with said Director a statement of his claim, consisting of two items, one for $12,500.00 for the conversion of per- [fol. 30] sonal property and the other for damages in the sum of $100,000.00 against Chicago Lloyds for malicious prosecution and false arrest, attaching thereto a copy of the petition filed in the Circuit Court of the City of St. Louis and stating that when said claim had been reduced to judgment in said Circuit Court he would file an amended or supplemental claim on the item for malicious prosecution and false arrest.

17. That thereafter when said suit was called for trial in said Circuit Court, the attorneys for Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, and Chicago Lloyds, withdrew as counsel and exhibited to said Circuit Court a letter written to them by the attorneys for the liquidator herein directing such withdrawal; that thereafter on March 17, 1941, a jury was waived in said case, Robert A. Roessell, the only defendant appearing, was dismissed at the conclusion of the evidence and said cause being then submitted to said court on the pleadings and evidence was taken under advisement by it.

18. That on March 22, 1941, said Court caused a letter to be written to the representative of said Director of Insurance as liquidator which notified the liquidator of the facts set forth in Finding 17 and asks an immediate reply; that a reply was sent by the attorneys of the liquidator that counsel had withdrawn in said Morris suit at the request of the liquidator and that in his opinion any judgment that might be entered therein would violate the injunctive order of the Superior Court of Cook County entered as hereinbefore set forth on February 9, 1938.

19. That the Circuit Court of the City of St. Louis was, [fol. 31] and is, a court of record in and for said State, and that on April 7, 1941, a judgment was entered in said court in favor of said Charles B. Morriss, plaintiff, and against Chicago Lloyds, an unincorporated association, Associated

Underwriters, Inc., a corporation, and Associated Underwriters, Inc., a corporation, attorney in fact for Chicago Lloyds, a voluntary association, in the amount of $50,000.00 damages, $35,000.00 actual and $15,000.00 punitive; that said judgment is final and has never been appealed from.

20. That on August 2, 1941 said Morris filed with the liquidator herein an amended claim (Claimant's Exhibit 2) and filed therewith an exemplified transcript of the records and proceedings held in the said Circuit Court of the City of St. Louis.

21. Finding with reference to liquidator's tenth report on claims; that claimant filed his objections and exceptions to the recommendation for disallowance of his claim and that the matter was then referred to the Master "for hearing and recommendation."

22. That it should be noted that said Morris has now abandoned his original claim for $12,500.00 for conversion of property, and leaves only his claim originally made for $100,000.00, reduced by said judgment to the sum of $50,000.00 and interest.

That further, it should be noted that the claimant herein relies entirely for proof of his claim upon his Exhibit 2, which is a transcript of the Morris judgment in the Circuit Court of the City of St. Louis, and that he has made no attempt to prove his claim by any other means.

[fol. 32] "Findings of the Master Derived From a Consideration of the Evidence Herein as Summarized by the Master in His Foregoing Statement of the Facts."

1. That the Superior Court has jurisdiction of the parties and subject matter of the litigation referred to the Master.

2. That Morris has failed to present evidence or testimony of sufficient weight to cause the Master to recommend that the liquidator's report on claims be changed to allow the claim of Morris, as he finds that the recommendation of liquidator is sustained in fact and the objections thereto of Morris are not sustained in fact.

3. That counsel for claimant and the Director of Insurance have both gone to great work and pains aiding the Master in the hearings and have prepared voluminous

briefs and statements of facts to aid him in arriving at his conclusions.

4. That the equities of the case are with Paul F. Jones, Director of Insurance.

"Conclusions of Law."

That there is no dispute on any material fact in the matter involved in this reference and the only question involved is a question of law stated thus: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment: The claimant here in effect admits that a court other than [fol. 33] the one appointing such a liquidator cannot by the rendition of a judgment in a suit pending before such appointment reach property of the estate in the hands of the liquidator. It is contended however that the subsequent entry of a judgment on such a claim establishes and liquidates the claim as a valid indebtedness of the company being liquidated and that such judgment is conclusive on the receiver and the court appointing him."

That there is some authority supporting such a contention. On the other hand there is authority which forbids such a contention.

Most of the cases supporting the contention are found to be federal cases and affected by the Federal Statutes allowing suit in State Courts against Federal receivers without leave of the Court appointing the receivers (See U. S. C. F'otle 28 Sec. 125). Typical of such cases is *Riehle* v. *Margolies*, 279 U. S. 218.

The opposing argument is that if such a judgment is held to be conclusive, the doors will be open to fraud; that great possibility to establish false or exorbitant claims against receivership defendants, will exist, and that the equitable and just administration of the estate in the hands of the receivership court will be prevented. It is undoubtedly true that the property of a company in receivership is held in trust for the benefit of all of its creditors. Consequently to allow a single creditor to recover in a litigation in another State a judgment which would have conclusive effect in the distribution of the common funds is now

consistent with due process for the remaining creditors. [fol. 34] In Illinois, Connecticut and Massachusetts, it is held that a judgment rendered against a receivership defendant by the Court of a foreign State, after the appointment of the Receiver is not conclusive unless the receiver defended therein by authority of the receivership Court. See *Evans* v. *Illinois Surety Co.*, 319 Ill. 105. *Attorney Gen.* v. *Sup. Council A. L. H.*, 198 Mass. 151 and *Husbands'* v. *Aetna Indemnity Co.*, 93 Conn. 194.

"Recommendations."

Finds as a conclusion of law that the judgment obtained by Morris in said Circuit Court is not conclusive upon the Director of Insurance of Illinois, the liquidator, or the court herein.

Recommends that the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objection to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding.

Master's certificate of services, fees and charges.

Fees fixed by Statute. He reports that he has taken and reported 2643 folios of testimony at the statutory rate of 15 cents per folio, amounting to $396.45.

"Fees to be Fixed by Court

To reading pleadings and testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and of law and drawing report thereon, serving notice to file objections and hearing and passing upon objections so filed, $500.00"

Transcript of Proceedings and Evidence

Transcript of proceedings had and evidence taken before the Master in Chancery, as follows:

[fol. 35] Statement made by attorney for liquidator: That the original claim of Charles B. Morris, No. L-9554, was filed with the liquidator on September 21, 1938; that there are two statements of claim, one in the amount of $100,000.00, alleging the pendency of the suit for actual and punitive damages for false arrest and malicious prosecution pending in the Circuit Court of the City of

St. Louis and the second for an alleged conversion of property of the claimant in the amount of $12,500.00; that said claim was subsequently amended by a letter dated August 1, 1941, and received by liquidator on August 2, 1941, in which the claim originally filed is amended by a transcript of proceedings and judgment in the St. Louis court and that the matter comes on to be heard before the Master upon the claims and the Liquidator's report and the objections filed to his report.

Mr. Tannenbaum: I think the Master ought to know what the objection to the claim was as set up in the report.

The Master: Well, the first thing perhaps should be, was there any specific basis for the rejection of the claim on the part of the Liquidator.

Mr. London: That is set out in the last part.

Mr. Tannenbaum: I will read from the abstract. It is a copy of that section there. You don't have to take this down.

(Reading).

Mr. Tannenbaum: That is your issue, I guess, isn't it?

Mr. Barnes: Well, we are not limited solely to that paragraph in the claim report.

Mr. Tannenbaum: I should think so. I should think that is your pleading.

[fol. 36] Mr. Barnes: Oh, no. The claim itself——

Mr. Real: You are proving up the case *de novo* here. Any objection to the claim is certainly available to us.

Mr. Tannenbaum: I don't think so.

Mr. Barnes: The report of the claim does not purport to show any or all the objections that the Liquidator may have or the basis for his recommendation either for allowance or disallowance as to any of the claims contained in this report. This tenth claim report includes approximately two thousand claims and it does not in any manner, shape or form purport to give any reasons why the Liquidator, or any basis for the Liquidator's recommendation either for allowance or disallowance as to the respective claims reported on.

Mr. Tannenbaum: Well, all the other claims in that report were allowed except the one, which was disallowed by agreement, and this is the only one to which you have filed objections, so there would not be any necessity of raising any issue on the other claims, but it seems to me to be——

Mr. Barnes: It is not a question of raising issue on them. We were not attempting in any manner to do that. That never has been the purpose of the Liquidator's report in the proceedings or any similar liquidation proceeding. This is the tenth claim report. We have filed nine before, and in none of those reports have we specified in the report any reason or basis for the Liquidator's recommendation either for allowance or disallowance. The report contains only a statement of the claim number, the name of the claimant, the amount of the claim, and the amount recommended for allowance or the recommendation of disallowance.

[fol. 37] Mr. Tannenbaum: The fact of the matter is, you do state the reason——

Mr. Real: We are not required to. We certainly are not bound to.

Mr. Barnes: The only reason that was put in there was just to have a brief statement as to the nature of the claim.

Mr. Tannenbaum: I would suggest that you state your grounds completely then.

Mr. Barnes: I don't think so.

Mr. Arnold: You have the burden of proof here.

Mr. Tannenbaum: It is no question on the burden of proof. It is a question on the issues.

Mr. Barnes: The issue comes up on the claim report and the objections.

Mr. Tannenbaum: I think you set up the reasons right in your report.

Mr. Arnold: I don't think that either the underwriters or liquidator are bound by any reasons cited in the report any more than if the report had said, "We recommend the claim for disallowance."

Mr. Barnes: That is all the report amounts to. The underwriters, who are interested parties in this proceeding as much as anybody else——

Mr. Tannenbaum: They have filed no objections to the claim.

Mr. Arnold: Don't have to file any objections to the recommendation of disallowance. We agree with it.

Mr. Tannenbaum: Well, I think the proceedings are covered by the Civil Practice Act and where you make an issue, I think that is binding. Where no objections are filed—there are no objections filed by the underwriters here.

[fol. 38] Mr. Arnold: Why would the underwriters file an objection to the recommendation of disallowance?

Mr. Tannenbaum: They would have to file an objection to the claim.

Mr. Barnes: No.

Mr. Real: That is the duty of the liquidator.

Mr. Barnes: No parties in the proceedings have a duty or right under the statute to file any objections to the claim. The only rights they have is to file or make objections to the recommendation of the liquidator if, as and when he makes a report with respect to the claims filed with him, if they have objections to the recommendation that he makes in his report.

The Master: I think the burden is on the claimant to establish his claim.

Mr. Tannenbaum: We may have the burden but there should be issues definitely outlined here.

Mr. Barnes: That is solely your claim, Mr. Tannenbaum.

Mr. Tannenbaum: That does not make an issue. That is undenied.

Mr. Arnold: The liquidator's conclusion may be absolutely correct, and his reasons that he gives for it might not be well founded. As they say, lots of times on decisions handed down, that the conclusion was right but the reason was wrong, but still the conclusion is good.

Stipulation between parties that Chicago Lloyds was an aggregation of individuals that were organized to do an insurance business under the laws of Illinois under the Lloyds plan; that the Associated Underwriters, Inc. was a [fol. 39] corporation organized under the laws of Illinois and was the attorney in fact for Chicago Lloyds appointed by powers of attorney executed by each individual underwriter.

That each individual who became a member of Chicago Lloyds executed the same form of power of attorney to the Associated Underwriters, Inc. up to 1937, when the form was changed.

Form of said power of attorney offered in evidence as claimant's Exhibit 1.

Stipulation of counsel that Chicago Lloyds, through its attorney in fact, Associated Underwriters, Inc., duly made application in accordance with the laws of the State of Missouri to transact automobile liability insurance business in Missouri prior to 1932.

Judgment roll which was attached as the amended claim offered in evidence and marked Claimant's Exhibit 2.

Mr. Real: The liquidator does object to this offer, your Honor, as to Claimant's Exhibit 2, for the reason that this judgment was taken in contempt of an injunction order entered by the court in which these proceedings were pending, the judgment having been taken some three years after the liquidation proceedings and finding of insolvency and injunction order had been entered; that notice of the insolvency proceedings and the order of injunction had been given to the claimant and his counsel, and at the time the judgment was taken they were aware of the fact that they were proceeding in violation of that injunction order.

We object to it for the reason that it is our contention under the statute it is a judgment taken by fraud and collu-[fol. 40] sion, and therefore not admissible in these proceedings, as fraud and collusion are defined in Section 209 of the Illinois Insurance Code of 1937.

The judgment is further objected to for the reason that the claim or claims upon which the judgment is based are in their nature contingent, contingent as to liability and unliquidated as to amount, and therefore those claims fall within subsection 3 of paragraph 209 of the Insurance Code of 1937, which provides for the filing and the allowance of such claims, for the reason that the claims did not become absolute and liquidated under the provision of the statute on or before the last day fixed for the filing of proofs of claim against the assets of said company.

Liquidator further objects for the reason that a judgment taken either in the courts of Illinois or the courts of any other state after the injunction order had been issued by the court in which these proceedings were pending is not a valid judgment against the liquidator and the assets in his hands, although it may be valid as against the corporate entity itself, and is therefore not admissible in these proceedings, to establish the claim.

Claimant's Exhibit 1 admitted in evidence.

The Master: Suppose I withhold my ruling on this until you submit authorities?

Claimant's Exhibit 3, copy of power of attorney, admitted in evidence.

Claimant's Exhibits 4, 5, 6, 7, 8, 9, 10 and 11 admitted in evidence.

Stipulation that Claimant's Exhibit 1 was filed with the Superintendent of Insurance in Missouri and was form in [fol. 41] use prior to 1937 and in force and effect at the time of the acts complained of in this action.

Admission by counsel for all parties that Chicago Lloyds on passage of the first Lloyds Act in Illinois in 1927 filed a copy of the power of attorney which has been introduced in evidence with the Department of Trade and Commerce of Illinois.

Mr. Real: Now, I have just one or two matters here which I think ought to be in the record at this time. Can it be stipulated that on and prior to the 20th day of September, 1938, the Claimant had notice of the liquidation proceedings in the Superior Court of Cook County and of the order of injunction issued by that court?

Mr. London: Let me see that date, will you?

Mr. Barnes: September 28, 1938.

Mr. London: What is the date of the appointment?

Mr. Real: February 9th.

Mr. Barnes: November 9, 1938.

Mr. London: Yes, it may be stipulated, because he filed a claim.

Mr. Tannenbaum: This doesn't show that he had knowledge of the injunctional order.

Stipulation that claimant received notice of the institution of the liquidation proceedings offered and received in evidence as Liquidator's Exhibit 1.

Liquidator's Exhibit 2 (Claim of Charles B. Morris) and Liquidator's Exhibit 3 admitted in evidence.

[fol. 42] Mr. Real: Just one other matter. Since there is no stipulation that Charles B. Morris or his counsel had specific notice of the injunction order, I want to reserve the right to produce some evidence on that.

Claimant's Exhibits 12, 13, 14, 15, 16 and 17 offered and received in evidence.

Objections by Claimant

Objections by Charles B. Morris, claimant, to amended report of Master in Chancery. Objects to form of report in that it is uncertain whether the Master intended to make a distinction between the twenty-three paragraphs following the heading: "The Facts as Summarized by the Master From the Evidence Submitted, Both Oral and Docu-

mentary" and the matter following the heading "Findings of the Master Derived From a Consideration of the Evidence Herein as Summarized by the Master in His Foregoing Statement of the Facts" and it is not stated whether the twenty-three paragraphs following the first heading are intended to be or are findings of fact. Also objects to statement in first paragraph of report that the Master took the testimony of witnesses produced, and the reference to oral evidence in the Master's report, because no oral evidence was introduced before the Master.

Objects to Finding No. 4 because it fails to find that, in accordance with the statutes of Missouri by written instrument dated November 2, 1925, Chicago Lloyds appointed and authorized the Superintendent of the Insurance Department of Missouri for the purposes mentioned in the statute recited therein "to do any and all the things in said section specified in its behalf to be done, by said Superintendent," and that said instrument provides "here- [fol. 43] by further consenting that service of process as therein referred to upon such Superintendent shall be valid and binding, and be deemed personal service upon the company." (Claimant's Exhibit No. 3.)

Objects to Finding No. 4 for failure expressly to find that by instrument (Claimant's Exhibit No. 5) dated February 28, 1927, Chicago Lloyds appointed the Superintendent of the Insurance Department of Missouri the true and lawful attorney in and for Missouri upon whom all process against Chicago Lloyds * * * may be served in any action or special proceeding against them, subject to "and in accordance with all the provisions of the statutes and laws of said State of Missouri now in force, and such amendments thereto as may hereafter be made. And the said attorney is hereby duly authorized and empowered as my agent, and as the agent of the said Chicago Lloyds Underwriters its attorney in fact or its subscribers, to receive and accept service for and in behalf of the said Chicago Lloyds Underwriters its attorney in fact or its subscribers in all the actions mentioned above; and service of process upon, or acceptance of service of process by said attorney shall be valid and binding, and be deemed personal service upon said Chicago Lloyds Underwriters its attorney in fact or its subscribers; and this authority of said attorney shall continue is force so long as said Chicago Lloyds Underwriters its attorney in fact, or its subscribers shall have

any contracts or liabilities outstanding in the State of Missouri."

Objects to Finding No. 13 insofar as it fails to state that the matters stated were not established by independent [fol. 44] proof but were disclosed merely by said order of February 9, 1938, and that said order also discloses that on February 9, 1938, the same day on which the petition mentioned in Finding No. 12 was filed, there was also filed a consent in writing by Chicago Lloyds, acting through its attorney in fact, Associated Underwriters, Inc., to the order entered February 9, 1938.

Objects to Finding No. 14:

(A) The matters stated therein are irrelevant, immaterial and incompetent, and do not tend to establish any reason for disallowing the claim of claimant based on said judgment of April 7, 1941, or for not according full faith and credit to said judgment.

(B) It is not expressly found therein, or elsewhere in the report, that said order was entered without notice to "creditors or persons having claims against Chicago Lloyds", including claimant.

(C) It is not expressly found therein, or elsewhere in the report, that there is no evidence that claimant or his attorneys had notice or knowledge that the order of February 9, 1938, contained any provision restraining the prosecution of suits pending on that date against Chicago Lloyds, and that said order of February 9, 1938, does not restrain the prosecution of suits pending on that date against Chicago Lloyds and does not purport to do so.

Objects to Findings Nos. 17 and 18 because the matters therein stated are irrelevant, immaterial and incompetent and do not affect the validity and binding effect of the judgment in question and state no cause or reason for [fol. 45] not according full faith and credit thereto.

Objects to Finding No. 19 because it fails to find that the Circuit Court of the City of St. Louis was and is a court of record in and for said city, and, under the constitution and statutes of Missouri, had jurisdiction of the subject matter of said suit against Chicago Lloyds and others and jurisdiction of the parties thereto.

Objects to statement in Finding No. 21 that "the matter was then referred to me for hearing and recommenda-

tion", though order of reference only directs the Master to "report to this Court his findings with respect thereto".

Objects to statement in Finding No. 22 that it should be noted that claimant relies entirely for proof of the claim upon his Exhibit 2, which is a transcript of the Morris judgment in the Circuit Court, City of St. Louis, and fails to find that claimant relies upon said exhibit and the other exhibits and documentary evidence introduced and the stipulations appearing in the transcript of proceedings before the Master.

Objects to Finding No. 2 under the heading "Findings of the Master Derived from a Consideration of the Evidence Herein as Summarized by the Master in his Foregoing Statement of the Facts" because:

(A) It is not a finding of fact.

(B) It is contrary to the law and the evidence; that from the uncontradicted evidence and other findings by the Master, it appears that the claim of Charles B. Morris is based upon the judgment rendered April 7, 1941 in the Circuit Court, City of St. Louis, a court of record having [fol. 46] jurisdiction of the parties and the subject matter, and, under Section 1 of Article IV of the Constitution of the United States, full faith and credit must be accorded it.

(C) To refuse to accord full faith and credit to said judgment is to deny claimant his rights under Section 2 of Article IV of the Constitution of the United States and is a violation of Section 1 of Amendment XIV to the United States Constitution.

(D) No evidence supporting the conclusion "that the recommendation (of the Liquidator) is sustained in fact" was introduced or offered on behalf of the Liquidator or of the Underwriters.

Objects to Finding No. 3 under said second heading as immaterial.

Objects to Finding No. 4 under said second heading because it is not a finding of fact, is erroneous in law and contrary to the evidence, and the Master ought to have concluded that claimant established his claim by introducing in evidence transcript of the record, proceedings and judgment, duly exemplified and authenticated according to the Act of Congress, in the Circuit Court of St.

Louis in cause No. 206424, series "B" (being the judgment in question).

Objects to report for failure to find the provisions of Section 22 of Article VI and Section 24 of Article IX of the Constitution of Missouri, and Sections 724, 725, 726, 727, 728, 729, 732, 5892, 5893, 5894, 5897, Article 4 of Chapter 5 and each section thereof, and Article 10 of Chapter 37 and each section thereof, all being part of the 1929 Revised Statutes of Missouri, reference to all of [fol. 47] which provisions is hereby made and the same are incorporated herein as if copied.

Objects to matter stated under heading "Conclusions of Law" because they are not conclusions at all but mere argument, and are erroneous in law; the statement of the legal question presented by the undisputed facts is inaccurate; the statement of the admissions and contentions on behalf of claimant is erroneous; the arguments advanced against according full faith and credit to a judgment of a sister State are unsound and the Master erroneously assumes that the Liquidator was appointed by the Court.

Objects to matter stated under the heading "Recommendations".

As to the first paragraph because the order of reference merely directs the Master to report his findings; the paragraph is not a recommendation but in the nature of a conclusion of law, and is erroneous in law and contrary to the facts; and notwithstanding the Master states therein that the said judgment is not "conclusive" upon Liquidator, the effect of this conclusion is that said judgment is of no force and effect as against Liquidator, not binding upon him and not to be accorded full faith and credit.

As to the second paragraph because the order of reference merely directs the Master to report his findings; the recommendation is contrary to law and to the evidence and is inconsistent with the Master's findings; and it fails to accord full faith and credit to the judgment in question and denies to claimant his rights under Section 2 of Article IV of the United States Constitution and violates Section 1 of Amendment XIV of the United States Constitution. [fol. 48] The foregoing objections are all marked "Overruled" in the margin of each objection with the signature of the Master underneath the same.

Objections of Various Underwriters

Objections to Master's modified report of "Various Underwriters Represented by Campbell, Clithero and Fischer".

1. Object to failure to find that underwriters were not individually served with summons in the suit (in which the judgment was rendered) and to find that said underwriters did not enter their appearance in said suit.

2. Objects to failure of Master to find that Robert Roessel and Associated Underwriters, Inc., or either of them, were acting in excess of and outside the scope of their authority as agent or attorney-in-fact for Chicago Lloyds at time or times that they or either of them instituted or caused to be instituted any criminal proceeding against claimant.

3. Objects to failure to find that the Circuit Court of the City of St. Louis, Missouri, did not have jurisdiction over the persons of the underwriters of Chicago Lloyds individually in the suit referred to in objection No. 1.

4. Objects to failure of Master to find as conclusions of law that the said underwriters are not bound by the judgment obtained by claimant and that said judgment is not payable or subject to satisfaction out of the assets in the hands of the Liquidator belonging to said underwriters.

All of said objections are marked "Overruled" in the margin of each objection and signed by the Master.

Claimant's Exhibit 2

Exemplified transcript of record in cause No. 206424, [fol. 49] series "B", in the Circuit Court, City of St. Louis, Missouri, wherein Charles B. Morris is plaintiff and Associated Underwriters, Incorporated, a corporation, Associated Underwriters, Incorporated, a corporation, Attorney in fact for Chicago Lloyds, a voluntary association, Chicago Lloyds, an unincorporated association, and Robert A. Roessel, are defendants, duly authenticated in accordance with Title 28 Section 687 of the Judicial Code of the United States, as follows:

Petition filed August 24, 1934, states that Associated Underwriters, Inc., is and at all times therein stated was

an Illinois corporation; that Chicago Lloyds is an aggregation of individuals not incorporated and engaged exclusively in the business of writing and issuing policies of insurance * * * insuring * * * against loss by fire and other types of insurance (naming them); that said Associated Underwriters, Inc. is the attorney in fact for Chicago Lloyds; that Chicago Lloyds is and at all times herein stated was duly authorized by the Insurance Department of Missouri to carry on and has carried on such insurance business in the name of Chicago Lloyds in Missouri; that said Roessel is and at all times therein stated was an attorney at law and the attorney for said other defendants.

That for many years, to wit, twenty years, plaintiff was engaged in the insurance agency business and had a large acquaintance among insurance companies and agents and persons desiring insurance and others; that on February 8, 1929, he entered into a contract with Associated Underwriters, Inc., as attorney in fact for Chicago Lloyds, whereby he was appointed the agent for Associated Under- [fol. 50] writers, Inc., attorney in fact for Chicago Lloyds, and Chicago Lloyds to negotiate and effect fire (and other) insurance for Chicago Lloyds in Missouri; that by said agreement plaintiff agreed to make at least every third day daily reports and endorsements of insurance policies issued through his office and on or before the 10th day of each month to make a monthly account current report to defendants showing a detailed statement of business done by him for them during preceding month, balances due and owing by him to them and further agreed to pay the balances shown to be due them on said reports sixty days thereafter, which due date was thereafter changed to seventy-five days and later to ninety days; that plaintiff should receive as his compensation 20% of all net premiums of business written or renewed by him, and credit for same was taken by him in all monthly reports; that no fiduciary relation was created as to premiums collected on insurance written by him for defendants, but the relation of debtor and creditor was created between them for the balance shown to be due from him to them in each monthly statement, whether or not premiums due on insurance policies were collected by plaintiff; that during the performance of said contract plaintiff and said defendants so treated said balances and plaintiff deposited all premiums collected by him in his own general bank account in which all moneys received

by him were commingled, and remitted amounts shown to be due defendants on said monthly statements from time to time by his own personal checks, whether collected by him or not, and that at no time during said period did defendants [fol. 51] ever object to same; that he conducted a general insurance business in Missouri, established and maintained his own offices at his own expenses in St. Louis, had agents representing him in various parts of Missouri, represented other insurance companies in obtaining and writing insurance, and that writing insurance for defendants was but a part of his general insurance business, all of which was known to defendants.

That due to the general business depression in 1930, 1931 and 1932, he became delinquent in his remittances under and according to the terms of said contract, and extensions of time to pay same were given him by defendants from time to time until June, 1932, when defendants placed same in the hands of said Roessel, their attorney, to collect or to enforce and coerce collection; that said Roessel did not know or have legal justification for claiming that plaintiff was guilty of the crime of embezzlement and that there was probable cause for his prosecution for same; that under the terms of said contract plaintiff was merely indebted for premiums collected to Chicago Lloyds and Associated Underwriters, Inc., its attorney in fact, yet with a malicious design of coercing payment by threats of criminal prosecution, he (Roessel) made representations to the Circuit Attorney's office that plaintiff was guilty of the crime of embezzlement, and persuaded said office to order the arrest of plaintiff on a pretended charge of suspected embezzlement, to present said charge to the Grand Jury, and said defendant appeared before said Grand Jury, as a witness and gave testimony to procure plaintiff's indictment and procured his indictment on a charge of embezzlement and appeared in court [fol. 52] at the trial of said case and gave testimony before the court and jury, all wilfully, intentionally, wrongfully and maliciously, and without any probable cause therefor.

That on October 13, 1932, defendants wilfully and maliciously and without probable cause therefore, through said Roessel, their agent and attorney, lodged a complaint with the Circuit Attorney of St. Louis, Missouri, that plaintiff had committed the crime of embezzlement and had converted to his own uses premiums amounting to $2,410.58, the property of Associated Underwriters, Inc., without its assent,

and procured said Circuit Attorney to order the arrest of plaintiff; that the Sheriff of the City of St. Louis, pursuant to such order, arrested plaintiff and imprisoned him in the St. Louis City Jail for the space of one day and on October 14, 1932, plaintiff was again arrested on said charge and remained in jail one day and was compelled to and gave a bond in the sum of $5,000.00 to answer any charge that might be found against him; that thereafter on November 28,1932, plaintiff was again arrested on a charge of embezzlement from defendant, Associated Underwriter's, Inc., at defendants' instance and request and imprisoned and remained in jail two days and until released on bond.

That defendants and their attorneys and agent appeared before the Grand Jury of the City of St. Louis, gave testimony and procured plaintiff to be indicted by it, which indictment was filed in the office of the Clerk in the Circuit Court for Criminal Causes on December 2, 1932, wherein plaintiff was falsely charged with having embezzled from Associated Underwriters, Inc., as its agent, clerk, collector [fol. 53] and servant, defendants well knowing he was neither with regard to collections of premiums, the sum of $2,410.58, falsely alleging same to be the property of and belonging to Associated Underwriters, Inc., and a warrant was issued thereon and plaintiff was arrested, imprisoned and remained in jail for eight day and was compelled to give bail in the sum of $2500.00 to answer said charge.

That thereafter defendant pleaded not guilty to said charge, and, after several continuances at defendants' request, over plaintiff's protests and objections, said cause was finally set for trial October 25, 1933, and was then heard and tried in the Circuit Court of Criminal Causes before the Court and a Jury; that defendants, their said attorney, agents and employees appeared as witnesses and gave testimony and prosecuted plaintiff for said alleged offense, and did actively, intiontionly, wrongfully and maliciously prosecute said unfounded charge against plaintiff; that upon the conclusion of said trial, the Judge of said Court sustained a demurrer to the evidence of the State, and instructed the Jury to return a verdict in facor of defendant, which was accordingly done and plaintiff was discharged and fully acquitted of said offense.

That plaintiff incurred indebtedness to sureties on said bonds in the sum of $300.00; and indebtedness for attorney

fees in said action in the sum of $300.00 and was prevented from continuing his occupation as insurance agent from October 13, 1932, because of said charge being held and pending against him, and was compelled to devote much time to said case and in attending to said proceedings.
[fol. 54] That by reason of the premises he was greatly injured in his good name, fame and reputation, was exposed to public hatred, contempt and ridicule, suffered disgrace, humiliation and mental anxiety, and from the shame and disgrace of being arrested and imprisoned in the City Jail, all to his damage in the sum of $50,000.00; and by reason of the maliciousness of defendants in the institution and prosecution of said proceedings he prays a judgment for the further sum of $50,000.00 for exemplary and punitive damages.

Summonses in said cause dated August 24, 1934, one directed to Sheriff of Cole County, Missouri, for service upon defendant, Chicago Lloyds, an unincorporated association, and the other to Sheriff of the City of St. Louis, Missouri, to be served upon defendants, Associated Underwriters, Inc., a corporation, Associated Underwriters, Inc., a corporation, Attorney in fact for Chicago Lloyds, a voluntary association, and Robert A. Roessel.

Return of Sheriff of City of St. Louis showing service of last named summons and of said petition on August 27, 1934, on Associated Underwriters, Inc., and on Associated Underwriters, Inc., attorney in fact for Chicago Lloyds, an unincorporated association by serving its agent, E. L. Werner.

Proof of service of said summons directed to Sheriff of Cole County, by said Sheriff in said Cole County on August 25, 1934, upon said Chicago Lloyds, an unincorporated association, by delivering a true copy of the writ and of said petition to the Chief Clerk to the Superintendent of the Insurance Department of Missouri, both the Superintendent [fol. 55] and Deputy Superintendent of said Department being absent from said County and he being the person authorized by law to acknowledge and receive and upon whom to serve process for and in behalf of said defendant, under Section 5675 of the Revised Statutes of Missouri 1929.

Petition of Chicago Lloyds for removal of cause to District Court of the United States in and for Eastern Division of the Eastern Judicial District of Missouri.

Alias summons dated September 15, 1934, issued to the Sheriff of said City of St. Louis for service upon Robert A. Roessel and return of said Sherriff showing service thereof and of said petition on September 19, 1934.

Order entered September 13, 1934, granting the prayer of petition filed for removal of cause to said District Court.

Manadate from said District Court filed January 13, 1938, ordering said cause remanded to said Circuit Court on January 7, 1938.

Order entered March 17, 1941, as follows:

Now at this day this cause coming on for hearing come the parties hereto by their respective attorneys; thereupon said parties waive the intervention of a jury and present this cause to the Court upon the pleadings, evidence and proof adduced, and at the close of the plaintiff's case the plaintiff dismisses as to the defendant Robert A. Roessel; thereupon the trial being terminated this cause is submitted to the Court, and the Court having heard and duly considered the same and not now being sufficiently advised thereof takes time to consider thereof. [fol. 56] Separate answers of the defendants filed by leave of Court.

Said separate answers of defendants are in words and figures as follows, to wit:

Answer of Associated Underwriters, Inc., attorney-in-fact for Chicago Lloyds (same as answer filed by it in said District Court).

Defendant, appearing specially and for purpose of challenging jurisdiction of Court and for answer to petition, states that this Court has no jurisdiction over its person because it is a corporation organized and existing under the laws of Illinois; that as such it is not engaged in nor doing business within Missouri, nor has it a place of business or office in Missouri, nor does it transact any business in Missouri, nor has it ever entered Missouri for the purpose of transacting any of its business, nor has it any office or a chief or any other office in this State or any agent or officer in charge of any office in this State or any agent or employee in this State.

Denies that E. L. Werner is agent of said defendant and in charge of its business in this State.

Denies that plaintiff was prevented from conducting his occupation as insurance agent as alleged in his petition and states that prior to October 13, 1932, his license as

an insurance agent and/or broker wsa revoked by the Insurance Department of Missouri for cause.

Denies that by reason of the premises in plaintiff's petition set forth he was greatly injured in his good name, fame and reputation and denies each and every other allegation in plaintiff's petition contained.

[fol. 57] Separate answer of defendant, Associated Underwriters, Inc., identical in wording to the preceding answer.

Order and judgment entered and rendered April 7, 1941, as follows:

This cause having heretofore been submitted to the Court on the 17th day of March, 1941, upon the pleadings, evidence and proof adduced, and on said last mentioned date the parties hereto having appeared by their respective attorneys of record and having presented this case to the Court without the intervention of a jury, a jury having been waived, and on said last mentioned date the Court having taken the same under advisement, now at this day the Court being full advised of and concerning the premises doth find the issues herein joined in favor of the plaintiff and against the defendants, and doth find that the defendants have been duly served with process as required by law, and that the Court has proper jurisdiction over the person of said defedants and over the subject matter of this suit, and the Court doth further find that said defendants are indebted to the plaintiff in the sum of $35,000.00 actual damages; and in the sum of $15,000.00 punitive damages, aggregating the total sum of $50,000.

Wherefore, it is ordered, adjudged and decreed by the Court that the plaintiff have and recover of the defendants the sum of Fifty Thousand ($50,000.00) Dollars, together with interest thereon at the rate of six per cent per annum, from this date until paid, together with the costs of this proceeding for which let execution issue.

CLAIMANT'S EXHIBIT 1

Form of power of attorney from individual underwriters [fol. 58] to Associated Underwriters, Inc., in effect at Chicago Lloyds prior to April 1, 1937, (being the same docu-

ment as that attached as Exhibit "B" (Rec. 52) to the petition filed in this cause June 24, 1938) as follows:

Appoints Associated Underwriters, Inc., to insure persons * * * against loss or damage * * * lawful for the undersigned to insure * * * * upon such terms and at such rates of premium as said attorney may from time to time deem proper; * * * to collect and sue, in its own name, for any and all premiums and other moneys which may at any time become due and owing to the undersigned, or in which the undersigned may have any interest by reason of any contract of insurance, * * * to receive and admit service of process in any suit at law or equity, brought upon or by reason of the issuance of any policy, and to cause an appearance to be made on behalf of the undersigned in any such suit; * * * to file any reports, statements, applications or other writings required by the laws, or regulations of any state, * * * or by the Insurance Department thereof; to make, constitute and appoint * * * the Insurance Commissioner or Insurance Superintendent of any other state, or of any other country, as may be required by the statutes of such state, or country respectively, the true and lawful attorney of the undersigned * * * in and for such other state or country, as the case may be, on whom all legal process against the undersigned, as an underwriter upon any such policy of insurance, or by reason of the execution of this power of attorney, may be served in any action or proceeding, subject to and in accordance with all of the provisions and the [fol. 59] statutes and laws of * * * such other state or country, as are now in force, or as mayhereafter be adopted; and any service of any such process from any court so served on said attorney, shall be valid service on the undersigned.

* * * * * * *

Twenty-Second: Said attorney shall be entitled to receive and take as full compensation for its service and expenses in procuring and writing insurance on behalf of the undersigned; a fixed commission of thirty per cent (30%) of all cash realized by said attorney for the undersigned, by way of net premiums, * * * . In addition to said fixed commissions aforesaid, said attorney shall be entitled to receive a further and contingent commission of five per cent (5%) on the net profits realized for the undersigned here-

under during each fiscal year; such net profits to be computed on the basis of gross premiums collected and after deducting all losses paid, fees and commissions paid to said attorney, return premiums and all other costs, charges, and expenses to the undersigned for conducting said insurance business hereunder. Said attorney shall, out of its fixed and contingent commissions, pay all expenses of every character excepting the following, namely: losses; taxes, dividends out of profits; Trustee's fees and expenses; and expenses incidental to the adjustment of losses, including counsel fees and legal expenses.

CLAIMANT'S EXHIBIT 3

Certified copy of appointment of Superintendent of Insurance of Missouri to acknowledge or receive service of process, executed on form provided by the Superintendent of Insurance on November 2, 1925, by Robert E. Kenyon, [fol. 60] President, and B. N. Anderson, Secretary, Appoints Superintendent of Insurance Department of Missouri in accordance with Section 7042 of the Revised Statutes of Missouri of 1909, which provides:

"Process against foreign companies, appointment of superintendent to receive or accept service of—Any insurance company not incorporated by or organized under the laws of this state, desiring to transact any business by any agent or agents in this state shall first file with the superintendent of the insurance department a written instrument or power of attorney, duly signed and sealed, appointing and authorizing said superintendent to acknowledge or receive service of process issued from any court of record * * * and upon whom such process may be served for and in behalf of such company in all proceedings that may be instituted against such company in any court of this state * * * and consenting that service of process upon said superintendent shall be taken and held to be as valid as if served upon the company, according to the laws of this or any other state. Service of process as aforesaid, issued by any such court, as aforesaid, upon the superintendent, shall be valid and binding, and be deemed personal service upon such company, so long as it shall have any policies or liabilities outstanding in this state, although such company may have withdrawn, been excluded from or ceased to do business in this state, * * *

and such service shall confer jurisdiction. * * * and if any such company shall fail, neglect or refuse to appoint and maintain, within the state, an attorney or agent, in the manner hereinbefore described, it shall forfeit the right to do or continue business in this state."

[fol. 61] for the purposes mentioned in said section, to do any and all things therein specified in its behalf to be done by said Superintendent, thereby further consenting that service of process as therein referred to upon such Superintendent shall be valid and binding and be deemed personal service upon the company so long as it shall have any policies or liabilities outstanding in Missouri.

CLAIMANT'S EXHIBIT 4

Letter dated March 22, 1941, from H. Sam Priest, Clerk of the Circuit Court (of the City of St. Louis) to Special Deputy in Charge of Liquidation of Chicago Lloyds at Chicago, Illinois. States that case of *Charles B. Morris* v. *Associated Underwriters, Inc.*, and *Chicago Lloyds* was set for trial in Said Court March 17, 1941, upon which day Robert A. Roessel, who had appeared as counsel of record for both said defendants, withdrew as counsel exhibiting to the Court a letter dated April 21, 1938, written by said Special Deputy wherein he stated that it was not his desire that Roessel continue in the defense of said suit; that the Court has heard the evidence and taken the same under submission and has directed said Clerk to inform said Special Deputy of the above and that the latter make known his reaction to the same forthwith, as he desires to pass judgment upon the matter.

CLAIMANT'S EXHIBIT 5

Certified copy of power of attorney, similar to Claimant's Exhibit 3 dated February 28, 1927, executed by Robert E. Kenyon, President of Associated Underwriters, Inc., attorney in fact for Chicago Lloyds "being legally authorized thereto by every member of said Chicago Lloyds," appointing Ben C. Hyde Superintendent of the Insurance [fol. 62] Department of the State of Missouri and his successors in office attorney in Missouri on whom all process against Chicago Lloyds, its attorney in fact or policyholders may be served, in any action or proceeding against

Chicago Lloyds, its attorney in fact or policyholders in Missouri, subject to and in accordance with all the provisions of the statutes and laws of Missouri, and to receive and accept service for and in behalf of said Chicago Lloyds, its attorney in fact or subscribers in all such actions. Service of process upon or acceptance of service of process by said attorney shall be valid and binding and be deemed personal service upon said Chicago Lloyds Underwriters its attorney in fact or its subscribers, and this authority of said attorney shall continue in force as long as said Chicago Lloyds Underwriters, its attorney in fact or subscribers, shall have any contracts or liabilities out-standing in Missouri.

CLAIMANT'S EXHIBIT 6

Certified copy of letter dated June 27, 1936, from Chicago Lloyds to Superintendent of Insurance of Missouri, advising that Chicago Lloyds has decided to withdraw its application for a license to write automobile insurance in Missouri, and a copy of letter acknowledging receipt thereof.

CLAIMANT'S EXHIBIT 7

Certified copies of pleas to jurisdiction of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, filed in said District Court in said suit of Charles B. Morris.

CLAIMANT'S EXHIBIT 8

Certified copy of motion of defendants, Chicago Lloyds and Robert A. Roessel, to strike plaintiff's amended motion in said District Court to remand from the files.

[fol. 63] CLAIMANT'S EXHIBITS 9, 10, AND 11

Certified copies of order and of documents filed in the District Court in said cause, being the order overruling pleas to jurisdiction of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, and special demurrers of Chicago Lloyds and Robert A. Roessel to plaintiff's petition, and being the special demurrer of Chicago Lloyds, the separate answer of defendant Chicago Lloyds, an unincorporated association, and the separate answers of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds.

By said separate answer of Chicago Lloyds it states that the court has no jurisdiction over the person of said defendant because the Superintendent of the Insurance Department of Missouri is not authorized to accept service for it in this character and nature of action, that it denies specifically that plaintiff was prevented from conducting his occupation as insurance agent and states that prior to said 13th day of October, 1932, plaintiff's license as an insurance agent and/or broker was revoked by the Insurance Department of Missouri for cause and it denies that by reason of the premises in plaintiff's petition he was greatly injured in his good name, fame and reputation, and denies each and every other allegation in plaintiff's petition.

Answers of Associated Underwriters, Inc., individually and as attorney in fact for Chicago Lloyds, are the same as those in Record pages 300 to 303. (Not abstracted here. See Abst. 48.)

CLAIMANT'S EXHIBITS 12 AND 13

Certificates by Superintendent of Insurance of Missouri [fol. 64] that Chicago Lloyds has complied with the requirements of the laws of said State and is authorized to do the business of fire and marine insurance in Missouri until the first day of March, 1933 and 1935, respectively.

CLAIMANT'S EXHIBIT 14

Being certified copies of application by attorney in fact for Chicago Lloyds for license authorizing and empowering it to transact fire, marine and allied lines for the year ending December 31, 1931, and similar application for the year ending December 31, 1932.

Receipt of Roessel and Minton, attorneys for Chicago Lloyds, acknowledging receipt on January 22, 1934, on behalf of Chicago Lloyds of petition and summons served on the Deputy Superintendent of Insurance on January 20, 1934, in said suit of Charles E. Morris.

Similar receipt by Associated Underwriters, Inc., by C. A. Farwell, Assistant Secretary, acknowledging receipt of petition and summons served upon the Chief Clerk of the Insurance Department of Missouri on August 25, 1934, in said suit of Charles B. Morris.

Claimant's Exhibits 15 and 16

Certified copies of list of underwriters composing Chicago Lloyds as shown by its annual statement for the year ending December 31, 1932, and December 31, 1936 respectively, on file in and forming a part of the record of the Department of Insurance of the State of Illinois.

Claimant's Exhibit 17

Notice that claimant will ask the court to take judicial notice, pursuant to the Illinois statute, of the following:

[fol. 65] Section 22 of Article VI and Section 24 of Article IX of the Constitution of the State of Missouri.

Sections 724, 725, 726, 727, 728, 729, 732, 5892, 5893, 5894, 5897; also Article 4 of Chapter 5 and Article 10 of Chapter 37 and each section of each of said two articles; the foregoing sections and articles being part of the 1929 Revised Missouri Statutes.

Liquidator's Exhibit 1

Liquidator's Exhibit 1 consisting of the following:

Notice dated February 15, 1938, from Ernest Palmer, Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds, to its * * * creditors * * * that:

1. He has been directed by an order of the Superior Court, entered on February 9, 1938, to take possession of the property of and liquidate * * * Chicago Lloyds pursuant to the Illinois Insurance Code, and has appointed F. J. Bartsch, Special Deputy, as his agent to liquidate said business and all communications and transactions relating thereto should be addressed to and had with Bartsch.

2. In accordance with said order, Chicago Lloyds was adjudged insolvent and all insurance policies and contracts of Chicago Lloyds are terminated, and the rights and liabilities of all persons under insurance or other contracts are fixed, as of February 15, 1938, pursuant to the Illinois Insurance Code.

3. All persons indebted to Chicago Lloyds or having any of its property in their possession are required forthwith [fol. 66] to render an accounting of such debts and to pay the same and deliver such property to Bartsch.

4. Pursuant to the further order of Court, all persons, firms and corporations having any accounts, debts, claims or demands against Chicago Lloyds or claiming any interest in any funds or property in the hands of Liquidator, are required to file verified proof of their claims with said Special Deputy, and final date set by the Court for filing claims is November 15, 1938.

5. Liabilities will be determined as to all claims duly presented and all assets distributed without further notice and persons who fail to comply with the directions herein will not share in such distribution of assets.

Form of proof of claim enclosed therewith.

Notice to policyholders of Chicago Lloyds who have claims pending against them as to procedure to be followed and action to be taken by them.

LIQUIDATOR'S EXHIBIT 2

Verified proof of claim of Charles B. Morris on form furnished by Liquidator, filed with the Insurance Department of Illinois, Bureau of Liquidations, Conservations and Rehabilitations on September 21, 1938, states that the facts constituting the claim are that suit for $50,000 actual and $50,000 punitive damages for false arrest and malicious prosecution, was filed originally on January 19, 1934 in the Circuit Court of the City of St. Louis, Missouri, against Associated Underwriters, Inc., and Chicago Lloyds; that later an amended petition was filed joining Robert A. Roessel, as co-defendant; that case was removed to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri and remanded to [fol. 67] Circuit Court on January 7, 1938, where cause is now pending, ready for trial at the September Term of Docket.

A brief statement of the cause of action and petition is that on February 8, 1929, plaintiff entered into a contract with defendant, Associated Underwriters, Inc., and Chicago Lloyds, to act as their agent; that on October 13, 1932, all of defendants wilfully, maliciously and without probable cause, through Robert A. Roessel, as agent and attorney, procured the arrest of plaintiff, had him incarcerated on a false charge of having embezzled funds of said companies, as shown by petition thereto attached (which is a copy of

petition contained in Claimant's Exhibit 2, not abstracted here. See Abst. 41.)

LIQUIDATOR'S EXHIBIT 3

Copy of letter dated March 26, 1941, from Glenn, Real & Browning (attorneys for Liquidator) to Clerk of said Circuit Court, St. Louis, Missouri, *in re Morris* v. *Associated Underwriters, Chicago Lloyds, et al.* States that said Clerk's letter dated March 22, 1941, addressed to F. J. Bartsch, Special Deputy in charge of Liquidation of Chicago Lloyds, was referred to them for reply; that Chicago Lloyds is being liquidated in proceedings pending in the Superior Court of Cook County, case No. 38 S 1022 and the order appointing the Director of Insurance of Illinois as Liquidator was entered February 9, 1938, that Robert A. Roessel represented Chicago Lloyds in said proceedings (in Missouri) prior to the appointment of a Liquidator and withdrew therefrom at Liquidator's request; that it is Liquidator's position that plaintiff in said suit is enjoined from proceeding to obtain judgment against Chicago [fol. 68] Lloyds; that the injunction order entered February 9, 1938, specifically provides that:

"All persons are hereby immediately restrained and enjoined from obtaining, or attempting to obtain, preferences, judgments, attachments or other like liens * * * until the further order of the court."

That liquidation proceedings in this State being an action in rem is analogous to a bankruptcy proceeding, and the injunction order is good without notice and without service of process upon a violator of same; that while they fully appreciate that the injunction does not prevent the court from entering judgment, they believe that plaintiff, by asking the court to proceed to judgment against Chicago Lloyds, is in direct violation of the injunction, and should he bring such judgment into Illinois and attempt to enforce it here, he will be violating the injunction order.

That they regret they were not able to authorize Mr. Roessel to proceed to defend the judgment in said Court in order that this matter could be disposed of without the present situation arising where the court does not have the benefit of counsel; however the action of liquidator in the present instance conforms with the general practice es-

tablished by his office, and therefore he felt obliged to ask Mr. Roessel to withdraw.

OBJECTIONS TO FEES OF MASTER

Objections by Charles B. Morris to the fees of the Master in Chancery in connection with the claim of Charles B. Morris, on the grounds that the same are in excess of the amounts allowable under the law; that no sufficient showing is made for the allowance of the sum of $500.00 for reading pleadings and testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and of law [fol. 69] and drawing report thereon, etc., as set forth in the Master's certificate attached to his report; that no showing is made of the time spent on the various matters for which said fee is requested and that said charge of $500.00 is made for services not contemplated by the order of reference.

FINAL DECREE

Final decree or order confirming Master's report with respect to claim #L-9554 of Charles B. Morris and disallowing said claim, entered September 28, 1944.

The court finds that it has jurisdiction of the parties and subject matter; that the findings of said Master in Chancery are proper, true and correct and that the objections to the Master's report filed by the claimant and by various underwriters represented by the firm of Campbell, Clithero & Fischer, which were ordered to stand as exceptions before the Court, were properly overruled by the Master.

That the judgment in favor of Charles B. Morris in Case No. 206424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator and should not be considered in this liquidation proceedings as evidence of the liability or amount of damages of claimant against the assets of the Estate of Chicago Lloyds in this liquidation proceedings.

That Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206424 and the other evidence introduced by claimant as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds.

[fol. 70] That the questions of law and fact raised by the objections of various underwriters represented by Campbell, Clithero & Fischer to said Master's report are not properly before this Court and it should not now pass upon or decide any of said questions raised by these objections.

Orders, adjudges and decrees:

1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed.

2. That the objections of said underwriters are overruled without prejudice to the right to renew said exceptions when and if the questions, or any of them, may become material and are properly before the Court.

3. That said Claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommendation that said claim be disallowed are overruled and said report on claims and the recommendation of disallowance of said claim is approved and confined, and said claim disallowed in accordance with the recommendations contained in the Master's report.

That said cause coming on for further hearing upon said Master's report and the objections to fees of the Master filed by claimant, and the Court having heard the testimony of the Master and having examined and considered his report and his Certificate of Services, Fees and Charges attached to said Report, and having heard statements and arguments of counsel, and it appearing, and said Master and counsel conceding that an error was made in the Master's Certificate with respect to the folio charges and the fees fixed by Statute in the amount of $396.45, the Master [fol. 71] is entitled to compensation therefor in the sum of $114.60.

That the Court finds that the fees requested by said Master to be fixed by the Court in the sum of $500.00 are the fair and reasonable fees for the services performed by said Master in the consideration of the pleadings and testimony, examining briefs and authorities, hearing said cause and arguments, preparing findings of fact and of law and drawing his report thereon and that said fee is consistent with justice to all parties concerned in said matter.

Orders, adjudges and decrees that the objections to the fees of the Master of claimant filed on September 13, 1944, be sustained as to the item in the Master's Certificate of Services, Fees and Charges of fees fixed by Statute, and said amount is reduced from $396.45 and allowed for $114.60, and the item of Fees to be Fixed by the Court of $500.00 is approved and allowed to said Master for his services rendered in connection with the hearing of said claim and objections thereto and rendering said Report, and said fees in the total amount of $614.60 are hereby approved and allowed and taxed as costs against claimant and that execution issue therefor against claimant, to which said rulings and order claimant objects.

Further orders, adjudges and decrees that the original of the Master's Report may be incorporated in the record on any appeal taken from the entry of said Order.

Fixes the amount of a supersedeas bond on appeal from said Order at the sum of $5,000.00 and fixes the conditions of said bond and extends time for filing same.

[fols. 72-73] NOTICE OF APPEAL

Notice of appeal filed by Charles B. Morris on December 12, 1944, appealing from said order of September 28, 1944.

PRAECIPE

Praecipe for record and proof of service of notice of appeal and praecipe for record, filed December 15, 1944, by Charles B. Morris. Said proof of service has attached thereto several exhibits and shows service of the notice of appeal by mail on December 12, 1944, and by the posting of a copy of said notice of appeal in the office of the County Clerk of Cook County, Illinois, on December 13, 1944, and shows the service of the praecipe for record by mail on December 13, 1944.

Order entered on November 28, 1944, that all documents attached to the report of the Master in Chancery filed on June 16, 1944, together with all exhibits in the matter of the hearing of said claim, filed by said Master in a separate folder, each identified as such by mark of identification, may be incorporated with the original of said Master's report in the record on any appeal taken from said order of September 28, 1944.

CLERK'S CERTIFICATE

Certificate of Clerk that the above and foregoing is a true, perfect and complete transcript of the record according to the praecipe filed, except the original Master's report and exhibits, which were by order of court incorporated herein and made a part hereof.

J. L. London, Ford W. Thompson and Tannenbaum, Polikoff & Schmidt, Attorneys for Appellant.

[fol. 74] IN SUPREME COURT OF ILLINOIS

BRIEF FOR APPELLANT—Filed February 20, 1945

* * * * * * *

ERRORS RELIED ON

The Court erred:

1. In finding or holding that the findings of the master are proper, true and correct and that the claimant's objections to the master's report were properly overruled; in overruling the claimant's exceptions to said report; and in approving said report.

2. In overruling the claimant's objections to the report of the liquidator on the claim based upon the Missouri judgment and to the recommendation of the liquidator that said claim be disallowed; in approving the liquidator's tenth report on claims in so far as it recommended the disallowance of the claim on said Missouri judgment; and in disallowing said claim.

3. In finding that the Missouri judgment in favor of claimant and against Chicago Lloyds, *et al.*, has no force or binding effect upon the liquidator and should not be considered in the liquidation proceeding as evidence of the liability to claimant or of the amount of his claim; and in failing to hold that the liquidator was estopped by said judgment, and that it was *res judicata* and binding and conclusive evidence of the claim of appellant.

4. In failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States, the Act of

[fol. 75] Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States; and in failing to give full faith and credit to said judgment.

5. In holding that the decree entered February 9, 1938, restrained claimant from prosecuting to judgment the action pending in Missouri.

6. In failing to hold that the decree entered February 9, 1938, did not restrain claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the court did not have power or authority to restrain the claimant from prosecuting that action in as much as the judgment rendered therein would not be a lien upon the property in the possession of the liquidator.

7. In failing to hold that the decree entered February 9, 1938, did not restrain the claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the court did not have jurisdiction over the claimant.

8. In failing to hold that Section 189 of the Illinois Insurance Code (which the court below construed as warranting the entry of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no jurisdiction, restraining him from prosecuting an action pending in a sister State, and as warranting, on the strength of that injunction, the refusal to allow a claim, based on a judgment obtained in the sister State, to share in the property of Chicago Lloyds in the possession of the liquidator) is unconstitutional for the reasons (1) that, so construed, it is inconsistent with Section 1 of Amendment XIV of the Federal Constitution because it deprives the claimant of his [fols. 76-77] property,—the right to prosecute the suit theretofore commenced in a sister State and the right to have his claim on a judgment rendered in his favor in that State allowed as a claim against Chicago Lloyds and entitled to share with other creditors in the assets of Chicago Lloyds—without due process of law; (2) that, so construed, it abridges the privileges and immunities of citizens of the United States, guaranteed by Section 2 of Article IV of the Federal Constitution, by denying to claimant the right to bring suit on the Missouri judgment to which Illinois, by Section 1 of Article IV, is required to give full faith and

credit; (3) that, so construed, it invades the privileges and immunities of claimant guaranteed by Section 1 of Amendment XIV to the Federal Constitution; and (4) that, so construed, it denies to claimant the equal protection of the laws guaranteed by that section.

9. In failing to hold that the court could not give extra-territorial effect to the injunction entered February 9, 1938, by refusing to give full faith and credit to the judgment of Missouri.

10. In allowing the sum of $500.00 to the master for his services in the consideration of the pleadings, testimony, etc.

[fols. 78-79] [File endorsement omitted.]

[fol. 80] IN THE SUPREME COURT OF ILLINOIS—MARCH TERM, A. D. 1945.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, (Respondent) Appellee,

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, CHARLES N. ACKERMAN, et al., (Respondents) Appellees,

CHARLES B. MORRIS, (Claimant) Appellant

Appeal from Superior Court of Cook County.
Honorable Ulysses S. Schwartz, Judge Presiding.

Additional Abstract of Record by N. P. Parkinson, acting Director of Insurance of the State of Illinois, as Appellee —Filed April 25, 1945

ORDER FIXING TIME AND PROCEDURE FOR FILING CLAIMS

Order fixing time and procedure for filing claims entered on the 15th day of February, 1938, by the Superior Court of Cook County, Illinois.

Said Order provides that any and all persons, firms and corporations having any accounts, debts, claims and demands against Chicago Lloyds, or claiming any interest in any funds or property in the hands of the Liquidator [fol. 81] are hereby ordered and required to file verified statements of the nature, date of accrual and the amounts of their respective accounts, debts, claims or demands with his Special Deputy at the Bureau of Liquidations, Conservations and Rehabilitations, 175 West Jackson Boulevard, Chicago, Illinois, on or before the 15th day of November, A. D. 1938, and that no such person, firm or corporation having, or claiming to have, any claim or claims against said respondent, Chicago Lloyds, shall participate in the assets aforesaid, unless such claim or claims shall be so filed and presented.

It is further ordered that said Liquidator give public notice to be published once each week for three successive weeks in a newspaper of general circulation published in the City of Chicago, Illinois, of the time within, the manner in which, and the place where all such debts, accounts, claims or demands shall be filed, the first publication to be on or before the 1st day of March, 1938.

Further ordered that upon the filing of such claim or claims, said Liquidator shall examine into and investigate the same and report to the Court his recommendation as to whether the same shall be allowed in whole or in part, and if in part, what part, or entirely disallowed, and that upon the filing of such report and objections thereto, if any, the Court should take such further action in the premises as justice might require.

It is further ordered that all claims filed with the Clerk of this Court against the respondent, Chicago Lloyds, are referred to said Liquidator for investigation and report.

[fol. 82] Order on Liquidator's Tenth Report

The Order on Liquidator's Tenth Report on Claims entered by the Superior Court of Cook County, Illinois, on the 10th day of June, 1942, provided:

1. That leave be granted Liquidator to file said Tenth Report on Claims instanter.

2. That within fourteen days from the entry of said Order, Liquidator sent notice by mail, postage prepaid,

to each claimant named in Exhibits A and B attached to and made a part of Liquidator's Tenth Report on Claims at the address shown in their respective claims, notifying them of the filing of said Report and of the recommendations of the Liquidator upon each claimant's claim, and the time and the manner fixed therein for the filing of objections, and of the time fixed for the hearing upon said Report, his recommendations thereon and any objections filed thereto.

3. That all claimants whose claims were reported upon in said Report and Exhibits A and B thereto attached and upon which claims recommendations have been made by the Liquidator and all other interested parties of record, may file objections with the Clerk of the Court to the recommendations of said Liquidator on or before the 10th day of July, 1942, copies of said objections to be filed likewise with Liquidator's Special Deputy, 175 West Jackson Boulevard, Chicago, Illinois.

4. That a hearing upon said Liquidator's Tenth Report on Claims and upon such objections as may be filed against the Liquidator's recommendations on said claims is set for the 14th day of July, 1942, at 10:30 A. M.

[fol. 83] Master's Report.

Proceedings Before Master

Proceedings had and evidence taken in said cause before L. A. Wescott, Master in Chancery, on the 12th day of August, 1942.

Mr. Arnold, representing certain underwriters, made the following objection to the offer in evidence of Claimant's Exhibit 2.

Mr. Arnold: We wish to join in the objections made by the liquidator, and also in behalf of the underwriters whom we represent, that it nowhere appears from the judgment roll that those underwriters were made a party defendant to this proceeding, and as such, could not be made the basis of a claim against them in this proceeding; further, that the judgment would seek to establish the joint liability against the underwriters in violation of the express provisions of the power of attorney, which

is the authority under which Associated Underwriters was acting.

Mr. Arnold: In connection with my objection that the underwriters whom we represent were not made parties to this suit, also it appears from the judgment roll that summons was never served upon them nor were they notified of the pendency of the proceedings in any other manner.

That portion of claimant's claim in the amount of $12,500.00 for conversion of property has been abandoned.

Objection by Mr. Arnold to Claimant's Exhibit 5.

Mr. Arnold: We also object to the introduction of this exhibit, Claimant's Exhibit 5, as long as it purports to be a power of attorney executed by the president of Associated Underwriters, Inc., authorizing the superintend-
[fol. 84] ent of the insurance department of the state of Missouri as the agent to accept service and summons upon Chicago Lloyds Underwriters, in that the authority granted by this power of attorney is in excess of the authority which Associated Underwriters had under power of attorney granted to it by the various underwriters.

Liquidator's Exhibit 1 admitted in evidence.

Mr. Real: Just one other matter. Since there is no stipulation that Charles B. Morris or his counsel had specific notice of the injunction order, I want to reserve the right to produce some evidence on that.

Mr. Tannenbaum: Didn't we stipulate that Morris had notice?

Mr. Real: Stipulated that Morris had notice of the liquidation order.

Mr. Tannenbaum: And that notice was sent out.

Mr. Real: I don't know whether——

Mr. London: Yes.

Mr. Real: If it doesn't, I desire to show that he did have notice.

Claimant's Exhibit 12 admitted in evidence over objection as to the materiality of it in this proceeding.

Claimant's Exhibit 13 offered in evidence.

Mr. Arnold: I take it they are all going in subject to the same objections.

The Master: Yes, let it be marked and received in evidence.

[fol. 85] Claimant's (Charles B. Morris') Exhibit 14 offered in evidence.

Mr. Real: I just want to make a more specific objection than the one heretofore urged to these documents, with reference to the fourth document in this group exhibit (exhibits 12 to 17, inclusive), which will be Exhibit 14, and that being that the notice or summons shown there is addressed to the Chicago Lloyds in a suit between Morris as plaintiff and Chicago Lloyds as defendant, and the receipt on the bottom thereof is a receipt of Associated Underwriters, Inc., of Chicago, but from a perusal of the document it does not appear the Associated Underwriters is a party to the suit, that that notice is based upon.

Mr. Arnold: There will be a further objection to the notice, being Part 3 of this group Exhibit 14. There is no showing of an authority on the part of the persons purporting to receipt for the same on behalf of Chicago Lloyds, consequently, it would not constitute any valid or binding notice.

The Master: It will be admitted subject to the objection.

Claimant's (Charles B. Morris') Exhibit 15 admitted in evidence over the objection that it is immaterial and irrelevant in this proceeding.

Claimant's (Charles B. Morris') Exhibit 16 received in evidence subject to the same objections.

Claimant's (Charles B. Morris') Exhibit 17 received in evidence subject to formal objections.

Certificate of Master that the foregoing was all the evidence offered and received upon the hearing of the above entitled cause.

[fol. 86] CLAIMANTS EXHIBIT 2

Petition filed in the Circuit Court of the City of St. Louis, State of Missouri, on the 24th day of August, 1934, in the case of Charles B. Morris, plaintiff, vs. Associated Underwriters, incorporated, a corporation, et al., defendants, which is the Petition upon which judgment was subsequently rendered and which is reflected in Claimant's Exhibit 2. Paragraph three of said Petition is as follows:

"Plaintiff further states that due to the general business depression in 1930, 1931 and 1932, the plaintiff became *delinquent* in his remittances and payments of his indebtedness under and according to the terms of said contract, and

extensions of time to pay same were given plaintiff by said defendants from time to time, until to wit, June, 1932, when said defendants placed same in the hands of defendant, Robert A. Roessel, their attorney, to collect or to enforce and coerce collection; that the defendant, Robert A. Roessel, did not know, or have legal justification for claiming that the plaintiff was guilty of the crime of embezzlement, and that there was probable cause for his prosecution for same; that under the terms of his written contract with said defendants, which said defendant had, the plaintiff was merely indebted for the alleged premiums collected, to the defendants Chicago Lloyds and Associated Underwriters, Incorporated, attorney in fact for said Chicago Lloyds, yet, with a malicious design of coercing payment by and through threats of and a criminal prosecution, he made representations to the Circuit Attorney's office that the plaintiff was guilty of the crime of embezzlement, and, being a lawyer of ability and repute, he persuaded the Circuit Attorney's [fol. 87] office, through his persistence and representations, to order the arrest of the plaintiff on a pretended charge of suspected embezzlement, to present a charge of same to the Grand Jury, and said defendant appeared before said Grand Jury, as a witness, and gave testimony to procure the indictment of the plaintiff, and did procure the indictment of the plaintiff by the Grand Jury on a charge of the crime of embezzlement, and said defendant appeared in court at the trial of said case and gave testimony before the court and jury, all of which was done wilfully, intentionally, wrongfully and maliciously, and without any probable cause therefor."

Order entered by the Circuit Court, City of St. Louis, Missouri, on the 17th day of March, 1941.

"Now at this day this cause coming on for hearing come the parties hereto by their respective attorneys; thereupon said parties waive the intervention of a jury and present this cause to the Court upon the pleadings, evidence and proof adduced, and at the close of the plaintiff's case the plaintiff dismisses as to the defendant Robert A. Roessel; thereupon the trial being terminated this cause is submitted to the Court, and the Court having heard and duly considered the same and not now being sufficiently advised thereof takes time to consider thereof.

Separate answers of the defendants filed by leave of Court."

Separate Answer of the defendant, Robert A. Roessel, filed in said Court on the 17th day of March, 1941, was in words and figures as follows, towit:

[fol. 88] "Comes now the Defendant, and for answer to Plaintiff's Petition admits that he is now and was an attorney-at-law at all times in Plaintiff's Petition mentioned.

"Further answering this Defendant specifically denies that the Plaintiff was prevented from continuing his occupation as insurance agent as alleged in his Petition, and states the fact to be that prior to the said October 13, 1932, Plaintiff's license as an insurance agent and/or broker was revoked by the Insurance Department of the State of Missouri for cause.

"Further answering this Defendant specifically denies that by reason of the premises in Plaintiff's Petition set forth that he was greatly injured in his good name, fame and reputation.

"Further answering this Defendant denies each and every other allegation in Plaintiff's Petition contained.

"Wherefore, having fully answered, this Defendant prays to go hence with his costs in this behalf expended."

Separate answer of Defendant, Associated Underwriters, Inc., a corporation, attorney-in-fact for Chicago Lloyds, filed in said cause in said Court on the 17th day of March, 1941. Robert A. Roessel appears as the attorney for said defendant.

Separate answer of Defendant, Associated Underwriters, Inc., a corporation, was filed in said cause in said Court on the 17th day of March, 1941. Robert A. Roessel appears as the attorney for said defendant.

Claimant's Exhibit 1—form of Power of Attorney of individual underwriters to Associated Underwriters, Inc., in effect at Chicago Lloyds prior to April 1, 1937. (Being the [fol. 89] same document as that attached as Exhibit "B" (Rec. 52) to the Petition filed in the Superior Court of Cook County on June 24, 1938) as follows:

Recites that undersigned is desirous of becoming an insurer and underwriter in accordance with the provisions hereof, but not otherwise, against loss or damage resulting from those causes and/or hazards against which it may be lawful for the undesigned to insure under the laws of the State of Illinois and/or of such other States, Territories, Districts, and/or countries in which the insured risks are located.

Further recites that the undersigned desires to write such insurance as one of an aggregation of individuals with separate and several liability as between themselves, and as between each of them and any person, firm, association, or corporation insured in accordance herewith.

Recites that the undersigned has agreed to pay to Associated Underwriters, Inc., the attorney-in-fact herinafter mentioned, the sum of $250.00 for each $1000.00 of securities deposited hereunder as and for full payment and satisfaction of all services rendered and costs or expenses incurred or sustained by said Attorney in connection with the inception and development of the plan for writing insurance, not including, however, commissions hereafter to be paid to said attorney for procuring applications from persons, firms or corporations, for the issuance to them of policies of insurance as herein provided, * * *.

Recites that Associated Underwriters, Inc., a corporation of Illinois, has agreed to act as agent and attorney-in-fact, [fol. 90] for the undersigned, and for any other persons constituting from time to time, such aggregation of individuals.

Recites that the undersinged desires to have all such policies of insurance as may be issued by said attorney, as agent for the undersigned as an underwriter and for the other underwriters thereto, issued under the name, designation or style of Chicago Lloyds.

Appoints Associated Underwriters, Inc. his true and lawful attorney for him and in his name, place and stead to insure persons, firms, associations and corporations against loss or damage from any one or more of the hazards and/or causes against which it may be lawful for the undersigned to insure under the laws of the State of Illinois, or of such other state * * * upon such terms and at such rates of premium as such Attorney may from time to time deem proper * * * to collect and sue, in its own name, for any and all premiums and other moneys which may at any time become due and owing to the undersigned, or in which the undersinged may have any interest by reason of any contract of insurance * * * to be sued in its own name and as for its own liability, for any cause of action accruing in favor of any insured by reason of the issuance thereto of any policy or policies of insurance pursuant hereto; to adjust, settle and compromise each and every loss, claim, or demand that shall arise or accrue under such policy, and

to pay the undersigned's proportionate part of the same out of any money, securities or other thing of value belonging to the undersigned and being in the possession or custody of said attorney or deposited in trust with a Trustee as [fol. 91] herein provided; * * * to receive and admit service of process in any suit at law or equity, brought upon or by reason of the issuance of any such policy, and to cause an appearance to be made on behalf of the undersigned in any such suit; to employ counsel and to defend, compromise, adjust, or settle any such suit, and to enter into any admissions, agreements, or arrangements with the parties bringing such suits, with respect to the undersigned's liability to make payments on any such policy * * * as shall in the judgment of said attorney be expedient; to file any reports, statements, applications or other writings required by the laws, or regulations of any state, * * * or by the Insurance Department thereof; to make, constitute and appoint * * * the Insurance Commissioner or Insurance Superintendent of any other State, or of any other country, as may be required by the statutes of such state, or country respectively, the true and lawful attorney of the undersigned in and for such other state or country, as the case may be, on whom all legal process against the undersigned, as an underwriter upon any such policy of insurance, or by reason of the execution of this power of attorney, may be served in any action or proceeding, subject to and in accordance with all of the provisions and the statutes and laws of Illinois or such other state or country, as are now in force, or as may hereafter be adopted; and any service of any such process from any court so served on said attorney, shall be valid service on the undersigned.

The forgoing powers and each and all of them, and each and all of the other powers and authority herein contained or hereby granted, are given and granted expressly subject [fol. 92] to each and all of the following stipulations, agreements and conditions, namely: * * *

Ninth: Provides for the deposit of certain securities with the Trustee in accordance with the terms of said agreement.

Tenth: Said trust deposit is made by the undersigned upon the terms, provisions and trusts which are hereinafter set forth.

Eleventh: The principal of said deposit shall be used (in the event that funds of the undersigned in the hands of said attorney shall be inadequate to pay losses) to enable said attorney in fact to pay therefrom, or from the proceeds of the sale thereof, the undersigned's proportionate amounts of liability accruing upon claims for loss or damage sustained by any insured to whom policies of insurance shall hereafter be issued in accordance herewith. But the liability of the undersigned to replenish or maintain said funds or securities shall be limited to depreciation thereof and shall not include any liability to replace funds or securities used to pay losses sustained by reason of insurance written pursuant hereto.

Twelfth: Provides for title to said securities to be vested in the Trustee subject to the provisions of this Power of Attorney.

Sixteenth: Upon the termination of this power of attorney, by revocation, death or legal disability, and after the satisfaction, payment or release of the undersigned of and from all liability upon any policies of insurance previously issued, pursuant hereto, and upon payment of the proportionate part of the Trustee's fees and charges, [fol. 93] the said funds or securities so deposited shall be re-delivered to the undersigned, or his legal representatives. • • •

Eighteenth: For the sole purpose of procuring funds with which to pay the undersigned's proportionate part of claims for losses sustained upon policies of insurance issued pursuant hereto (in the event that funds of the undersigned in the hands of said attorney shall be inadequate to pay losses) the said attorney is hereby given power and authority to borrow against said deposited securities, upon the security thereof, to the extent of the amount of such proportionate part of such losses, and to encumber or to pledge said deposited securities with the lender. Such loans may be made by the Trustee or Trustees holding such securities pursuant hereto. • • •

Thirty-second: This power of attorney is executed by the undersigned and accepted by said attorney in the State of Illinois, and shall be subject to and construed with reference and according to the laws of the said State of Illinois.

Claimant's Exhibit 5. Certificate of the Superintendent of Insurance of the State of Missouri certifying that the annexed page is a true and correct photostatic copy of the original Power of Attorney appointing the Superintendent of Insurance of the State of Missouri agent to receive service of process for Chicago Lloyds Underwriters, Chicago, Illinois, executed February 28, 1927.

Attached to the foregoing certificate (our page 315) is a purported Power of Attorney which provides as follows: That Robert E. Kenyon, President of the Associated [fol. 94] Underwriters, Inc., attorney-in-fact for Chicago Lloyds Underwriters, being legally authorized thereto by every member of Chicago Lloyds Underwriters, does appoint Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, and his successors in office, the true and lawful attorney in and for the State of Missouri upon whom all process against Chicago Lloyds Underwriters, its attorney-in-fact or its policyholders may be served in any action or special proceeding against Chicago Lloyds Underwriters, its attorney-in-fact or policyholders in the State of Missouri, subject to and in accordance with all the provisions of the Statutes and laws of the State of Missouri now in force, and such amendments thereto as may hereinafter be made. And said Attorney is hereby authorized and empowered as my agent and as the agent of Chicago Lloyds Underwriters, its attorney-in-fact or its subscribers, to receive and accept service for and in behalf of the said Chicago Lloyds Underwriters, its attorney-in-fact or its subscribers, in all the actions mentioned above; and service of process upon, or acceptance of service of process by said attorney shall be valid and binding, and be deemed personal service upon said Chicago Lloyds Underwriters, its attorney-in-fact or its subscribers; and this authority of said attorney shall continue in force so long as said Chicago Lloyds Underwriters, its attorney-in-fact, or its subscribers shall have any contracts or liabilities outstanding in the State of Missouri.

The witnessing clause recites that Robert E. Kenyon had affixed his hand and seal to said document at Chicago, Illinois, on the 28th day of February, 1927. The blank [fol. 95] for signature is vacant, but there appears on the

margin of said document, in handwriting, the following: "The original exhibit shows the words *Robert R. Kenyon*, which are underlined, as his signature."

Certificate of Notary certifying that Robert E. Kenyon appeared before him and subscribed and acknowledged the foregoing instrument as his free and voluntary act.

Liquidator's Exhibit 1.

"BUREAU OF LIQUIDATIONS, CONSERVATIONS AND REHABILITATIONS

175 West Jackson Blvd.

Chicago, Illinois.

State of Illinois
Department of
Insurance

Telephone
Harrison 9191

Ernest Palmer,
Director of Insurance
H. B. Hersey
In charge of Bureau
F. J. Bartsch
Special Deputy

To the Policyholders, Creditors and all other persons interested in the affairs of CHICAGO LLOYDS:

NOTICE IS HEREBY GIVEN:

1. That the undersigned, Ernest Palmer, as Director of Insurance of the State of Illinois, has been directed by an order of the Superior Court of Cook County, Illinois, entered on the 9th day of February, 1938, to take possession of the property and to liquidate the business and affairs of Chicago Lloyds pursuant to the Insurance Code of the State of Illinois. The undersigned has appointed F. J. Bartsch, Special Deputy, as his agent to liquidate [fol. 96] the business of said Chicago Lloyds and all communications and all transactions relating thereto should be addressed to and had with said F. J. Bartsch, Special Deputy, at his office located at 175 West Jackson Boulevard, Chicago, Illinois.

2. In accordance with the aforesaid order of Court, the Chicago Lloyds has been adjudged insolvent and all insurance policies and contracts of said Chicago Lloyds are terminated, and the rights and liabilities of all persons

under insurance or other contracts are fixed, as of 12 o'clock noon Central Standard Time, February 15th, 1938, pursuant to the Insurance Code of the State of Illinois.

3. All persons indebted to the said Chicago Lloyds or having any of its property in their possession are required forthwith to render an accounting of such debts and to pay the same and deliver such property to F. J. Bartsch, Special Deputy.

4. Pursuant to the further order of said Court, all persons, firms and corporations having any accounts, debts, claims or demands against said Chicago Lloyds or claiming any interest in any funds or property in the hands of the Liquidator, are required to file verified proof of their claims with F. J. Bartsch, Special Deputy, at his office, 175 West Jackson Boulevard, Chicago, Illinois, on or before November 15th, 1938.

FINAL DATE SET BY COURT FOR FILING OF CLAIMS IS NOVEMBER 15TH, 1938.

5. Liabilities will be determined as to all claims duly presented and all assets distributed without further notice. Persons who fail to comply with the directions herein contained will not share in such distribution of assets.

Dated, Chicago, Illinois, February 15th, 1938.

Ernest Palmer, Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds.

[fol. 97] All communications regarding Chicago Lloyds should be addressed to:

F. J. Bartsch, Special Deputy,
175 West Jackson Blvd.,
Chicago, Illinois.

Co. Claim No. .....
Policy No. .....

LIQUIDATOR'S EXHIBIT 1.

People
vs.
Chicago Lloyds

Gen. No. 38 S 1022
Llewellyn A. Wescott
Master in Chancery
Superior Court, Cook County

To .....
.....
.....

Proof of Claim Blank is enclosed herewith."

FERRE C. WATKINS,
General Counsel, Department of Insurance, State of Illinois.
GLENN, REAL & BROWNING,
Attorneys for Appellee, N. P. Parkinson, Acting Director of Insurance of the State of Illinois.

[fol. 98] And, on the same day, to-wit: on the 25th day of April, A. D. 1945, there was filed by appellee, N. P. Parkinson, Acting Director of Insurance of the State of Illinois, Statement, Brief and Argument, pages six to eleven incorporated therein, being in the words and figures, following to-wit:

[fol. 99] IN SUPREME COURT OF ILLINOIS

POINTS AND AUTHORITIES

I

The Judgment of Appellant Is Void for the Reason That It Was Taken Against a Non-existent Statutory Entity, Chicago Lloyds

A judicial decree terminating the right of a company to continue in business is equivalent to a dissolution order, and judgments subsequently taken against the company are void.

Blanchard Bros. & Lane v. *Gay Co.*, 289 Ill. 413.
People v. *Marquette National Fire Ins. Co.*, 267 Ill. App. 478.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
First National Bank of Selma v. *Colby*, 88 U. S. 609; 22 L. Ed. 687.

Chicago Lloyds was an unincorporated insurance company authorized by a certificate of authority to transact

business. Certificates of authority to conduct business were issued by the Director of Insurance annually and expired on the 30th day of June following their issuance.

Par. 699, Chap. 73, *Illinois Revised Statutes* 1943.

The final certificate of authority issued to Chicago Lloyds expired on June 30, 1938, following the date of the order of liquidation. Chicago Lloyds ceased to be a statutory [fol. 100] entity either on the date of the liquidation order, or on June 30, 1938, when its certificate of authority expired. A judgment subsequently taken against it is void.

Pars. 699, 800, 801, 802, Chap. 73, *Illinois Revised Statutes* 1943.
Blanchard Bros. & Lane v. *Gay Co.*, 289 Ill. 413.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.

A judgment taken against a dissolved corporation is a nullity, and is not provable against the receiver or liquidator in the court having jurisdiction of the cause.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
Oklahoma Natural Gas Co. v. *Oklahoma*, 273 U. S. 257; 71 L. Ed 634.

In the absence of a statute preserving the right to maintain actions against dissolved corporations, all actions abate against a corporation upon its dissolution. In like manner, actions against an individual abate upon his death.

Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
Okla. Natural Gas Co. v. *Oklahoma*, 273 U. S. 257; 71 L. Ed. 634.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).

[fol. 101]

II

The Liquidation Proceeding Involved Herein Was a Statutory Liquidation, and the Judgment of Appellant Taken Subsequent to the Date of the Order of Liquidation is Not Provable In This Proceeding

The liquidation proceedings of Chicago Lloyds was a statutory liquidation of an insolvent insurance company under Article XIII of the Insurance Code of 1937, paragraph 799, *et seq.*, chapter 73, *Illinois Revised Statutes of* 1943.

A. Under Paragraph 803 of Chapter 73, the Liquidator is vested with title to all property, contracts and rights of action of the company as of the date of the liquidation order.

B. Paragraph 806, Chapter 73, provides that the rights of all creditors shall be fixed as of the date of the order of liquidation unless otherwise ordered, and that order provided such rights were fixed as of noon on February 15, 1938 (Abs. 5).

C. Paragraph 801, Chapter 73, provides for the issuance of an injunction "to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens," and such an injunction was issued (Abst. 6).

When a state has adopted a policy governing the liquidation of insurance companies, that policy is binding upon creditors wherever they may be located. A judgment taken against the insolvent subsequent to the date of the entry of the liquidation order is not entitled to recognition in the liquidation proceeding.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.

Alaska Packers Assn. v. *Industrial Acc. Com.*, 294 U. S. 532; 79 L. Ed. 1044.

[fol. 102] *Pacific Employers Insurance Company* v. *Industrial Acc. Com.*, 306 U. S. 493; 83 L. Ed. 940.

See also:

Clark v. *Williard*, 294 U. S. 211; 79 L. Ed. 865.
Bradford Electric Light Co. v. *Clapper*, 286 U. S. 145; 76 L. Ed. 1026.

All parties, whether policyholders or creditors, dealing with an Illinois insurance company have presumptive knowledge of its charter provisions and the statutory law governing its liquidation.

People v. *Niehaus*, 356 Ill. 104.
Relf v. *Rundle*, 103 U. S. 222; 26 L. Ed. 337.
Clark v. *Williard*, 292 U. S. 112; 78 L. Ed. 1160.

The laws of Illinois governing the liquidation of insurance companies and judicial proceedings thereunder are entitled to full faith and credit in the courts of sister states.

Converse v. *Hamilton*, 224 U. S. 243; 56 L. Ed. 749.
Hirson v. *United Stores Corporation*, 34 N. Y. S. (2nd) 122.
Wulf v. *Roseville Trust Co.*, 164 App. Div. 399; 149 N. Y. S. 683.

A corporation carries with it all charter provisions governing it into each state in which it carries on business, and all parties doing business with it are presumed to know the law governing it and are bound thereby.

Relf v. *Rundle*, 103 U. S. 222; 26 L. Ed. 337.
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
Clark v. *Williard*, 292 U. S. 112; 78 L. Ed. 1160.

[fol. 103] A. This rule is recognized in the courts of Missouri as applicable to statutory liquidation proceedings in which title to all assets of insolvent is vested in Superintendent of Insurance upon the entry of a liquidation order.

McDonald v. *Pacific States Life Ins. Co.*, 343 Mo. 1232; 124 S. W. (2nd) 1157.
State ex rel. McKittrick v. *Fidelity Assur. Assn.*, 344 Mo. 1; 179 S. W. (2nd) 67.
Pensinger v. *Pacific States Life Ins. Co.*, 25 Fed. Sup. (Mo.) 295.

B. The general rule in a statutory liquidation proceedings wherein a statutory liquidator is vested with title is that judgments taken against the insolvent company, subsequent to the liquidation order, are not provable in the liquidation proceedings.

Martyne v. *American Union Fire Ins. Co.*, 216 N. Y. 183; 110 N. E. 502.
In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied 311 U. S. 707).

U. S. Truck Co. v. *Penn Surety Corp.*, 259 Mich. 422; 243 N. W. 311.

Shreve Chair Co. v. *Mfgs. Fur. Co.*, 271 S. W. (Ark.) 954.

See also:

O'Malley v. *Wilson*, 182 Ga. 97; 185 S. E. 109.

Harrison v. *Missouri State Life Ins. Co.*, 177 Okla. 377; 59 Pac. (2nd) 774.

Parsons v. *Charter Oak Life Ins. Co.*, 31 Fed. (Iowa) 305.

Bockover v. *Life Association of America*, 77 Va. 85.

Gilman v. *Ketcham*, 84 Wis. 60; 54 N. W. 395; 23 L. R. A. 52.

[fols. 104-105] C. Under the decisions of the Missouri Courts, the judgment in the instant case is invalid and not provable against the liquidator.

McDonald v. *Pacific States Life Ins. Co.*, 343 Mo. 1232; 124 S. W. (2nd) 1157.

Pensinger v. *Pacific States Life Ins. Co.*, 25 Fed. Sup. (Mo.) 295.

State ex rel. McKittrick v. *Fidelity Assur. Assn.*, 344 Mo. 1; 179 S. W. (2nd) 67.

The full faith and credit clause of the Federal Constitution has no application to a void judgment of a sister state.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.

Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.

In re National Surety Co., 283 N. Y. 68; 27 N. E. (2nd) 505 (Cert. denied *Laughlin Admr.* v. *Pink, Supt. of Ins.*, 311 U. S. 707; 85 L. Ed. 459).

See also:

McDonald v. *Pacific States Life Ins. Co.*, 343 Mo. 1232; 124 S. W. (2nd) 1157.

Pensinger v. *Pacific States Life Ins. Co.*, 25 Fed. Sup. (Mo.) 295.

State ex rel. McKittrick v. *Fidelity Assur. Assn.*, 344 Mo. 1; 179 S. W. (2nd) 67.

Judgments taken against an insolvent insurance company, subsequent to the order of dissolution, are subject to collateral attack in the liquidation proceedings.

Evans v. *Illinois Surety Co.*, 319 Ill. 105.
Pendleton v. *Russell*, 144 U. S. 640; 36 L. Ed. 574.
In re National Surety Co. (*Cosby Motor Co.*), 22 N. Y. S. (2nd) 250.

[fol. 106] IN SUPREME COURT OF ILLINOIS

REPLY BRIEF OF APPELLANT—Filed May 12, 1945

* * * * * * *

He then refers to several sections of Article XIII of the Code which do not relate to the filing, proof and allowance of claims (Brief, pp. 27-28), but he does not refer to the sections which do. He asserts that the "Statute provides for a judicial hearing of contested claims" (Brief, p. 28), but he does not mention the section to which he refers and we have not found such a provision.

He relies principally upon Section 191 of the Code (Ill. Rev. Stat., Chap. 73, Sec. 803), which provides that title to the property of a company in liquidation is vested in the Director. (Brief, p. 28) Cases involving corporations are cited for the proposition that the title vested in the Director is recognized in other jurisdictions. The reasoning upon which the decisions in those cases rests is that a State, which has created a corporation, may say who the agents of that corporation are to be in case its charter is forfeited. (See quotation from *Relfe* v. *Rundle*, on pages 32 and 33 of the brief of appellee.) That reasoning is not applicable to associations which are not created by a State. Chicago Lloyds received no charter from the State of Illinois. (*Roach & Co.* v. *Harding*, 348 Ill. 454, 464; 7 C. J. S. "Associations" 19, 21.) It was formed by act of its members, many of whom are residents of States other than Illinois, (Claimants' Exs. Nos. 15 and 16) It transacted business in Illinois. It also transacted business in Missouri, and it may have done so in other States. If an association owns property located in more than one State, which of the States has the power of designating the "agent" (if he can be

called an agent of the association) to liquidate all its property wherever located? A corporation, which is created by the laws of one of the States, carries its charter and the laws of the State of its creation governing it into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. Chicago Lloyds has no charter into which Section 191 of the Code can be read. Consequently, the theory whereunder a statutory liquidator [fol. 107] of a corporation succeeds to the title to its property located in another State does not apply to an association.

But, for purposes of argument, we shall assume that the Director of Insurance of the State of Illinois succeeds to, and becomes vested with, title to all the property of the association which he has been ordered to liquidate. His title is merely that of a trustee or quasi-trustee for the purpose of distributing the assets of the company among its creditors and others entitled to it. (*Relfe* v. *Rundle* (Brief of appellee, p. 32).) It does not follow, as a consequence of the vesting of title in him, as trustee, that creditors can not obtain, in competent courts of sister States, judgments *in personam* against the company, or that such judgments are not entitled to full faith and credit pursuant to the command of the Federal Constitution. That result does not follow even in the case of a corporation. The authorities, which the Director has cited, involved corporations, not associations, and in those cases where it was held that a judgment against a corporation, rendered after it was dissolved, will not be allowed as a claim, the reason given for disallowance was that a judgment against a dissolved corporation is void, not that the liquidator was vested with title to the property of the company.

The next point made by the Director is that the claimant in this case must be presumed to know the law governing Lloyds associations and "that any claim he might have would be *dealt with* in accordance with the provisions of the Statutes of Illinois governing the liquidation of this company." (Brief, p. 34) It may be that a person dealing with a *corporation* is charged with notice and impliedly agrees that if the corporation is dissolved under the laws of the State of its creation, the statutory receiver will represent the corporation in any suit which the person dealing with the corporation may institute affecting the winding up of the

[fol. 108] affairs of the corporation. (*Relfe* v. *Rundle*, 103 U. S. 222, 225) It may be, in the absence of a contrary local policy, that a person dealing with a *corporation* is charged with notice and impliedly agrees that if the corporation is dissolved under the laws of the State of its creation, he will not be permitted to reach its property located in another State. Those consequences may follow from the theory that a corporation carries its charter and the laws of the State of its creation into every State in which it does business. They do not apply in the case of an association which has received no charter from a State.

However, we shall assume for argument that these consequences do apply to associations and that the statutory liquidator of an association, like a statutory liquidator of a corporation will represent it in any suit which may be instituted against it and that persons dealing with the association will not be permitted to reach its property located in another State. It does not follow that claims may not be liquidated in sister States, especially in States where the claimant resided and where the association did business and where the cause of action arose. The Director may represent the association in such actions against the association. The Director may resist the seizure of property, title to which is vested in him by the statute. But, claims may nevertheless be liquidated in competent courts. The cases cited by the Director hold only (1) that creditors will not be permitted to *reach property*, title to which has passed to the liquidator, and even this rule is subject to an exception (*Clark* v. *Williard*, 294 U. S. 211); or (2) that judgments rendered against a corporation after it has been dissolved are void. In *Relfe* v. *Rundal*, the liquidator did not contend that the action there was abated or that it could not be maintained in a sister State. He contended only that he had the right to remove the case to a Federal court.

[fol. 109] There is another fatal weakness in this point. Although the Director argues that the claimant must be presumed to know the law governing Lloyds associations and "that any claim he might have would be *dealt with* in accordance with the provisions of the statute of Illinois governing the liquidation of this company," he has not pointed to any provisions of the Code according to which claims of creditors are to be "dealt with." He has not shown that there is any provision in the Code which pur-

ports to prohibit the liquidation of claims in sister States or to confer exclusive jurisdiction to liquidate claims upon the supervising court. Later, in this reply, we shall refer to the provisions of the Code which relate to the filing, proof and allowance of claims.

From these two propositions the Director concludes that the claimant "could not obtain a judgment in a foreign State which would be valid against the Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds." (Brief, p. 35) Just how this conclusion follows from the propositions that the Director is vested with title to the property of Chicago Lloyds and that a claimant is presumed to know that his claim would be "dealt with" in accordance with the provisions of the Code is not clear.

At this point in his argument the Director has injected a new contention, not against the provability of the judgment, but against its validity. He argues that the judgment is invalid because the laws of Illinois are entitled to full faith and credit in Missouri and that under the full faith and credit clause the Missouri court "should have refused to enter judgment against Chicago Lloyds." (Brief, p. 35) He forgets that, but a few pages before, he argued that a State is not required to give faith and credit to the statutes of sister States. (Brief, pp. 19-26) Surely, the courts of one State are not to be ousted of their jurisdiction by legisla-
[fol. 110] tion of another, that the point might have been urged that the proceedings were not in conformity with the statute, but the point does not seem to have been made. The Director's statement that an injunction was issued in the *Evans* case is erroneous. (Brief, p. 51)

Summarizing, briefly, the answers to the Director's principal contentions:

I

A. Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate its property and a judgment rendered after the entry of such an order is not void.

B. Chicago Lloyds continued to remain capable of being sued after its certificate of authority to transact business in Illinois expired, even assuming that that certificate was not renewed.

C. Illinois is required to give full faith and credit to the Missouri judgment.

II

The fact that the liquidation proceeding here is statutory does not confer exclusive jurisdiction to liquidate claims upon the supervising court or warrant that court in disallowing claims on judgments rendered by competent courts of sister States after the entry of the order of liquidation, where the company is an association which has not been dissolved.

[fol. 111] A. Assuming that the Director of Insurance of the State of Illinois became vested with title to all property of Chicago Lloyds, it does not follow, as an incident of that title that claims against it may not be liquidated in competent Courts of sister States.

B. Assuming that the claimant is presumed to know that any claim he might have against Chicago Lloyds would be "dealt with" in accordance with the provisions of the statutes of Illinois, it does not follow that claims against Chicago Lloyds may not be liquidated in competent courts of sister States.

We regret that we have not had enough time to file a shorter reply.

Respectfully submitted, J. L. London, Ford W. Thompson and Tannenbaum, Polikoff & Schmidt, Attorneys for Appellant.

[fols. 112-113] In Supreme Court of Illinois

(Title Omitted)

Order of Submission—May 22, 1945

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and

entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Julius A. Polikoff for appellant and Raymond G. Real for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 114] IN SUPREME COURT OF ILLINOIS

(No. 28664.—Order affirmed.)

THE PEOPLE ex rel. PAUL F. JONES, Director of Insurance, Appellee,

vs.

CHICAGO LLOYDS *et al.*—(CHARLES B. MORRIS, Appellant)

OPINION FILED SEPTEMBER 19, 1945—Rehearing denied November 19, 1945

MR. JUSTICE GUNN delivered the opinion of the court:

The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as "liquidator," appointed by the decree of the superior court of Cook county upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.

As finally amended appellant's claim consists of a judgment rendered in the circuit court of the City of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the superior court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1,) and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment.

Appellant's claim involves a construction of the constitution of the United States, and authorizes a direct appeal to this court. *Groome* v. *Freyn Engineering Co.* 374 Ill. 113; *VanDyke* v. *Illinois Commercial Men's Ass'n*, 358 Ill. 458.

Many of the questions arising under this provision of the United States constitution have been so thoroughly settled that as to such questions an appeal to this court would not be entertained, because the question involved is no longer debatable, and we do not entertain appeals when the constitutional question is settled so as to be no longer debatable. *First Nat. Bank* v. *Village of South Pekin*, 371 Ill. 605; *Dean* v. *Board of Education*, 386 Ill. 156; *Wilson* v. *Prochnow*, 354 Ill. 98.

The question here presented, as set out in the report of the master, is as follows: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment?" This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal from the superior court of Cook county. (*Atkins* v. *Atkins*, 386 Ill. 345.) Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. [fol. 115]. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbiter of such questions arising under the full-faith-and-credit clause.

The facts as applicable to the questions involved are comparatively simple. Chicago Lloyds, an unincorporated association recognized and authorized by the laws of Illinois to transact insurance business in Illinois, and in other States, upon compliance with the laws of such other States, obtained a license to transact business in the State of Missouri March 1, 1932, and continued to have such authority for some years thereafter. Associated Underwriters, Inc., was the attorney in fact for Chicago Lloyds in said State,

and one Roessel was attorney for Chicago Lloyds, and its agent. The claimant, Charles B. Morris, became the agent handling such business in Missouri, under a contract. A dispute arose as to whether he had accounted for all premiums paid to him, which resulted in his being arrested upon the complaint of Roessel, charged with embezzlement, and was indicted, tried and acquitted.

August 24, 1934, Morris brought suit in the circuit court of the city of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., and attorney Roessel, for malicious prosecution and false arrest. The cause was removed to the United States court, and afterwards, January 7, 1938, remanded to the circuit court of the city of St. Louis. February 9, 1938, the People of the State of Illinois, upon the relation of the Director of Insurance, filed in the superior court of Cook county a petition praying for the entry of an order finding sufficient cause existed for the liquidation of Chicago Lloyds, and on the same day a decree was entered adjudging and decreeing that the Director of Insurance take possession of its property, and liquidate the same in accordance with the Illinois Insurance Code. February 15, 1938, an order fixing the time and procedure for [folio. 116] the filing of claims was made, requiring claims to be presented to the liquidator on or before November 15, 1938.

Before the liquidation proceeding Chicago Lloyds had questioned the jurisdiction of the circuit court of the city of St. Louis by a plea and demurrer which were overruled, and later filed an answer on the merits, as did also Associated Underwriters, Inc. After the order of the superior court of Cook county appointing a liquidator was entered, an injunction was issued restraining the claimant and others from prosecuting claims, (of which claimant concedes he had notice,) and counsel for Chicago Lloyds, upon the requirement of the liquidator, withdrew, and the St. Louis court was advised that the reason of such action was the liquidation proceedings in Illinois, with the consequent vesting of the title to all of the property and assets of Chicago Lloyds in the liquidator. Nevertheless, the claimant persisted in prosecuting his suit at law in the circuit court of the city of St. Louis, and April 7, 1941, such court entered a judgment in favor of the claimant against Chicago Lloyds and others in the amount of $50,000.

September 21, 1938, before obtaining judgment Morris filed his claim with the liquidator in the amount of $100,000, claiming damages for false imprisonment and malicious prosecution, and attached as an exhibit the complaint filed in the circuit court of the city of St. Louis. After he had obtained judgment he amended his claim by filing an exemplified copy of the judgment rendered by the circuit court of the city of St. Louis. The amended claims shows it arose from the same state of facts as the original. The only evidence resented by claimant was the record of this judgment obtained in the circuit court of the city of St. Louis.

In disposing of the issues presented and argued in this case it is first necessary to examine the status, rights and title of the liquidator of the insolvent insurance company under the laws of the State of Illinois. Article XIII of [fol. 117] "An Act to revise the law relating to insurance," referred to as the Insurance Code, (Ill. Rev. Stat. 1943, chap. 73, pars. 799 *et seq.*,) among other things provides for the liquidation of insolvent insurance companies. Section 188 of the Insurance Code, (Ill. Rev. Stat. 1943, chap. 73, par. 800,) specifies the grounds upon which the Director of Insurance and the Attorney General may petition a circuit or superior court for an order to show cause why an insurance company should not be liquidated. Section 189, (par. 801), of the Insurance Code provides the court may issue an injunction to protect the assets of such insolvent company. Section 190, (par. 802,) provides upon full hearing, the court may enter an order either to dismiss the proceeding, or find cause exists, and order the Director of Insurance to take possession of the property, business, assets, and affairs of said insolvent insurance company, and liquidate them according to law. Section 191 (par. 803) provides that the Director, as liquidator, is vested by law with title to the property, contracts and rights of such insolvent insurance company, as of the date of the order entered by the court. Section 193, (par. 805,) fixes the duties of the liquidator. Section 194, (par. 806,) provides that creditors, except those holding contingent claims, shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. Section 208, (par. 820,) directs the manner of fixing the time to file claims, after an order has been entered declaring the company insolvent. Section 209, subsection (3,)

(par. 821,) provides how and under what conditions a contingent claim may be allowed, with a limitation that the claim must become absolute against the company on or before the last day fixed for filing the proofs.

Under the provisions of a prior law, (Ill. Rev. Stat. 1935, chap. 73, par. 105 (4),) which is almost identical with section 191, we have held that the title of a liquidator of an insolvent insurance company is different from that of [fol. 118] a receiver in chancery, who is limited to the territorial jurisdiction of the court appointing him, but, on the contrary, vests in the liquidator the title to all of the property of an insolvent insurance company. *People ex rel. Palmer* v. *Niehaus*, 356 Ill. 104; *National Bondholders Corporation* v. *Joyce*, 258 N. Y. 257, 11 N. E. 2d 552.

The pioneer case making this distinction between the title of a liquidator appointed under a special statute, and that of a receiver, is *Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337, where the distinction between possession of a receiver and the title of a State officer, vested with title of assets of an insolvent corporation, was first discussed with like results. The title of such a liquidator reaches all of the assets of the company, including those in other States; (*Relfe* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749;) and the title of such a liquidator must be recognized by the courts of other States. *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.

At least twenty States, including Missouri, have enacted statutes vesting title to the property of an insolvent corporation in the liquidator appointed to take charge of its property, and the Supreme Court of Missouri has given, to a statute similar to section 191, (Mo. Rev. Stat. 1929, sec. 5947,) the construction we have given in the *Niehaus case*. (*McDonald* v. *Pacific States Life Ins. Co.* 343 Mo. 1232, 124 S. W. 2d 1157.) In this case the title of a liquidator appointed in Colorado was held superior to a later judgment in Missouri, levied on Missouri real estate.

The title of such a liquidator has been compared to that of a trustee under a general deed of assignment. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no

[fol. 119] reason why the statute vesting a liquidator with title should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. *Isaacs* v. *Hobbs Tie & Timber Co.* 282 U. S. 734, 75 L. ed. 645.

In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois statute for the liquidation of insolvent insurance companies.

Appellant claims that notwithstanding the property and assets of Chicago Lloyds vested in the liquidator, the full-faith-and-credit clause of the United States constitution, and the statutes enacted pursuant thereto, require the judgment rendered three years later, in the circuit court of the city of St. Louis, against Chicago Lloyds be allowed for the full amount, as a valid claim against the assets in possession of such liquidator.

If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds.

The construction and interpretation of the full-faith-and-credit clause has been the subject of much controversy and difficulty, and in some cases reaching results which are apparently contradictory. No rule can be laid down which [fol. 120] will fit all cases. In the simple instance of a judgment for debt against a person or corporation, where collection is sought in another State, with no complications involving insolvency, conflict of law, questions of jurisdiction, or offending State policies, little difficulty is had in applying the case of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, that a judgment have the same faith and credit in another State that it had in the State of its rendition. This

case was decided in 1813, but since that time the United States Supreme Court has held there were exceptions to the rule first announced, because of the complex nature of the Federal union and the necessity of preserving the sovereignty and policies of the several States by refraining from imposing upon them the laws of another State under the guise of the full-faith-and-credit clause.

From the cases a general pattern may be discovered controlling the several different classes of cases in which full faith is required, and those which are regarded as exceptions to the rule. Upon examination we find that the application of the full-faith-and-credit clause is particularly favored when applied to the enforcement of judgments of another State, as distinguished from statutes and other public acts. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) Doubtless because this provision is supposed to have been a part of the constitution to give effect to the general rule of *res judicata*. (*Magnolia Petroleum Corp.* v. *Hunt*, 320 U. S. 438, 88 L. ed. 149.) So when the same proposition of enforcing a judgment for money in one State is presented, and there is no question of exception to the rule arising, the rule of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, is easy to apply.

The first class of cases comprise those where full faith is required. In divorce matters the decree of another State is entitled to full faith and credit, where the jurisdiction of the trial court is not questioned. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) This is but an [fol. 121] application of the well-settled rule that when full faith and credit is sought the jurisdiction of the court rendering the judgment is always open to inquiry. (*Pendleton* v. *Russell*, 144 U. S. 640, 36 L. ed. 574.) So also, a judgment for money rendered in one State is enforcible in another although in the latter it would be regarded as a gambling debt and unenforcible. (*Fauntleroy* v. *Lum*, 210 U. S. 230, 52 L. ed. 1039.) In *Milwaukee Co.* v. *M. E. White Co.* 296 U. S. 268, 80 L. ed. 220, a judgment for taxes rendered in Wisconsin was enforced against the defendant in the State of Illinois. And in *Yarborough* v. *Yarborough*, 290 U. S. 202, 78 L. ed. 269, it is held that support money awarded a child by a decree of court in a divorce proceeding between the father and mother is not subject to being enlarged or increased in another State, where the decree is pleaded in bar, even though the child was not

a party to the proceeding. And similarly, the full-faith-and-credit clause applies to an unalterable decree of alimony of a divorced wife. (*Sistare* v. *Sistare*, 218 U. S. 1, 54 L. ed. 905). It is to be observed in all of the cases just cited there was a judgment or decree for money against the defendant, which was held binding in another State, whether urged for collection or defensive purposes.

A second class of cases, where full faith and credit have been denied, cover a wide field. It is a general rule that the courts of no country execute the penal laws of another; (*The Antelope*, 23 U. S. 10,) and, hence, full faith and credit has been denied a judgment for a penalty obtained by a State against an insurance company, (*State of Wisconsin* v. *Pelican Ins. Co.* 127 U. S. 265, 32 L. ed. 239) followed in *Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123, where the nature of the penalty is exhaustively treated. So, where the only remedy to collect an assessment against the stockholder of a corporation is at the suit of a *creditor*, denying full faith and credit to a judgment obtained by a receiver against a stockholder does not offend the constitution. [fol. 122] *Finney* v. *Guy*, 189 U. S. 335, 47 L. ed. 839.

Also, where the New York Code provided a foreign corporation could not maintain a suit unless the cause of action arose in the State, full faith and credit was not denied where the New York court refused to recognize an Illinois judgment in favor of a foreign corporation, where the action did not arise in the State of New York. *Anglo-American Provision Co.* v. *Davis Production Co.* 191 U. S. 373, 48 L. ed. 225.) The reason given is that the requirement that the action arise in New York goes to the jurisdiction of the New York court, and such jurisdiction is not afforded by the full-faith-and-credit clause. Likewise, a judgment against an insurance company on a policy, enforcible because the beneficiary has an insurable interest in the State where the contract is made, may not be enforcible in another State where the same interest of the beneficiary is held not to be an insurable one. *Griffin* v. *McCoach, Trustee*, 313 U. S. 498, 85 L. Ed. 1481.

The nature of a case as constituting a cause of action in the several States is not changed by the fact that it is reduced to judgment. (*Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123.) However, it must be observed that a State may not, under the guise of denying a remedy, refuse, under the full-faith-and-credit clause, claims otherwise capable

of being enforced in such other State. *Broderick* v. *Rosner*, 294 U. S. 629, 79 L. ed. 1100.

This second type of cases represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere. Two of these cases, the *Finney* and *Anglo-American cases*, are to be distinguished from the first class above discussed only because jurisdiction is lacking to afford a remedy, and not because of a mere difference between the States as to what amounts to a cause of action.

[fol. 123] A third class of cases arises when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property from that of the State in which it is sought to be enforced. So, the construction of a will involving real estate, (*Clarke* v. *Clarke*, 178 U. S. 186, 44 L. ed. 1028;) a judgment determining legitimacy of children, (*Olmsted* v. *Olmsted*, 216 U. S. 386, 54 L. ed. 530;) or the manner of adoption of children, (*Hood* v. *McGehee*, 237 U. S. 611, 59 L. ed. 1144;) or the capacity of a lunatic (*Gasquet* v. *Fenner*, 247 U. S. 16, 62 L. ed. 956;) and the interpretation of contracts, (*Pink* v. *A.A.A. Highway Express, Inc.* 314 U. S. 201, 86 L. ed. 152,) are all instances in which the judgment of one State is unenforcible in another State under the full-faith-and-credit clause, if opposed to the law of the latter.

In recent years there has been a trend towards yet another class of cases involving full faith. Where a party has an option to proceed under the laws of one of two or more States having similar laws, as in compensation cases, where the liability may be enforced either where the contract of employment is made, or where the injury occurs; and cases involving the liquidation of corporations, where they acquire title to the property by the judgment and laws of one State but have property in another which is subject to preferences which may be created by the State law of the latter. In *Pacific Employers Ins. Co.* v. *Industrial Accident Com. of Calif.* 306 U. S. 493, 83 L. ed. 940, it is said: "It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy. * * * The very

nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling [fol. 124] a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." Having this in mind the court held, in compensation cases, where each State had a compensation law, it would be lawful for a State to adopt or enforce the remedy of another, or follow its own. There an employee residing in Massachusetts, becoming employed in that State by a Massachusetts employer, and injured in the course of his employment in the State of California, was sustained in having compensation awarded under the California law.

In *Alaska Packers Ass'n* v. *Industrial Accident Com. of California*, 294 U. S. 532, 79 L. ed. 1044, an employee made his contract in the State of California, and by agreement with his employer to be transferred there and back, went to Alaska, where he was injured. Upon return to California he brought proceedings for compensation under the California law, which was allowed and sustained notwithstanding claim that the Alaska compensation law should control. In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 88 L. ed. 149, the plaintiff was a resident of Louisiana, and was employed in that State. In the course of his employment he went to the State of Texas, and was injured, and claimed and was allowed compensation under the Texas law. He then went back to Louisiana, the State where the contract was made, and filed another claim for compensation under the Louisiana law. The defendant pleaded *res judicata* under the Texas law, and the award in plaintiff's favor was reversed by the United States Supreme Court.

These three cases illustrate the proposition that a State may adopt and enforce the compensation laws of another, or may enforce its own laws in spite of the contract of employment being made in another State, but when it does take jurisdiction, and makes an award, there cannot be another award in another State, notwithstanding the latter [fol. 125] has a separate statute upon the subject, which would be available to the claimant had he not otherwise proceeded under the laws of another State. The result is analogous to that resulting from taking possession of the

res,—viz., the court first obtaining possession may not be disturbed by actions of other courts having concurrent jurisdiction.

In the matter of liquidation of corporations it has been frequently held that a receiver has no power beyond the jurisdiction of the court appointing him, and consequently his possession or title does not bind the courts of another State. In the case, however, of laws which vest title of an insolvent corporation in a liquidating officer, it has been determined that such law is a part of the corporation's charter and follows it to wherever it is authorized to transact business, and therefore, if by the law of its origin a liquidator acquires title, then such title must be recognized in all other States. (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Clark* v. *Williard*, 292 U. S. 112, 78 L. Ed. 1160.) In such case it is also competent for a State to adopt the policy of giving preference to resident creditors, where there is property of the insolvent corporation within the State. (*Clark* v. *Williard*, 294 U. S. 211, 79 L. Ed. 865.) But if there are no such creditors then a judgment rendered in another State than that of the residence of the liquidator is entitled to the same force and effect as in the State where it was rendered. It is open to the same attack, and subject to the same defenses. (*Robertson* v. *Pickrell*, 109 U. S. 608, 27 L. Ed. 1049) The tendency of most of the States is to give priority to the title of the liquidator unless a contrary policy is expressed. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. Ed. 1160.) Missouri has not expressed such a policy, but, as pointed out later, follows the majority rule.

No case has been called to our attention which gives to the judgments of one State the force and effect that it has therein as against a prior judgment in another State, [fol. 126] under which possession of property has been taken by the officer of the latter court. In such instances the rule seems to be uniform that the court which first acquires jurisdiction over the *res* is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction. *Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189, 79 L. ed. 850.

From these applications of full faith and credit we are required to ascertain the principle controlling this case. Illinois has a liquidation law which requires title to the

assets of an insolvent insurance company to vest in a liquidator. (Ill. Rev. Stat. 1943, chap. 73, par. 803.) Such a statute is valid. (*People* v. *Niehaus*, 356 Ill. 104.) Missouri has a similar statute, which has been construed substantially the same as that of Illinois. (*McDonald* v. *Pacific States Life Ins. Co.* 343 Mo. 1232, 124 S. W. 2d 1157.) The statute in each instance is merely authority to so place and vest the title, if the occasion requires it, as it (Ill. Rev. Stat. 1943, chap. 73, par. 800) requires a decree and finding of the circuit or superior court of insolvency, in which event the law places a title in the liquidator.

So, in this case, the title of appellee to the property and assets of Chicago Lloyds is based upon a judgment. While Missouri would have the power to give priority to Missouri creditors in the property of Chicago Lloyds located in that State, (*Clark* v. *Williard*, 292 U. S. 112, 78 L. Ed. 1160,) it has not done so; nor is there any proof there ever were any assets in Missouri at the time appellant obtained a judgment. The Illinois decree appointing a liquidator vested title and possession in him. This was known to appellant, because he filed a claim with the liquidator, in accordance with the Illinois Statute. The superior court of Illinois, by a decree finding insolvency, thus had obtained jurisdiction of the *res* by the law vesting title in liquidator, and such [fol. 127] liquidator is entitled to keep and retain such possession to the exclusion of the process of any other court. (*Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457.) There being no Missouri law to the contrary this would likewise apply to the assets in Missouri. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Under the law both of Missouri and Illinois it is plain no possession could be had by virtue of a Missouri judgment entered long after a decree finding facts which would vest title in a liquidator. Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise recognize the binding effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts.

Considered in the light of a claim what rights does a judgment obtained by appellant carry? We have held under a similar law that a judgment against a corporation, after title to its assets had passed to a liquidator, gave plaintiff no rights. (*Evans* v. *Illinois Surety Co.* 319 Ill. 105). The Missouri court has reached substantially the same result. (*McDonald* v. *Pacific States Life Ins. Co.*

343 Mo. 1232, 124 S. W. 2d 1157.) The judgment of another State under the Federal statute enacted by authority of the full-faith-and-credit provision (28 U. S. C. A., sec. 687) is entitled to the *same* credit that it would have in the State of its rendition. In Missouri, not only the statute, but the construction of the statute, is similar to the law of Illinois, and had a liquidator been decreed in the State of Missouri, appellant either could not have had his judgment or, if he obtained it after the decree of insolvency, could not have enforced it against the property in the hands of the liquidator. He can have no greater rights in Illinois, under his judgment, than he could have in Missouri. (*Adams* v. *Saenger*, 303 U. S. 59, 82 L. ed. 649.) Therefore, to disallow appellant's claim would afford the same effect to his judgment in Illinois that, under the same circumstances, it would have had in Missouri. [fol. 128] Under this view the judgment of the superior court was correct.

The title of appellee is acquired under the statutes of Illinois and a decree of one of its courts of general jurisdiction. No authority has been called to our attention which gives a judgment acquired against the insolvent debtor, after its assets have been taken possession of and vested in a liquidator, priority over a judgment or decree which requires the distribution of the assets among those filing claims in pursuance of the law. Under such circumstances it seems logical to hold appellant was bound under the full-faith-and-credit clause to recognize the effect of this Illinois decree, as the courts of Illinois would be required to do had the judgment in Missouri been first made a lien, and since the liquidator appointed by the Illinois court acquired possession first, any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree.

Aside from the case of a surplus in the hands of the liquidator, we do not see how the cases cited by appellant have any application. All of those cases cited involving receivers are limited in their effect by the fact that a receiver has no authority whatever beyond the jurisdiction of the court which appointed it, and hence have no application to a situation in which the liquidator has acquired title to property which the courts of other States are bound to recognize.

This case comes within the class where the holder of

a foreign judgment, who is given no special rights against an insolvent corporation, may not, because of the judgment alone, impose a different method of distribution of its assets than the court administering the insolvent estate. Certainly no decision has been cited by appellant which would give him rights he would not have under like circumstances in the State of Missouri. We find no authority for the proposition that the full-faith-and-credit [fol. 129] clause of the constitution of the United States or the enabling acts thereunder are authority for placing the creditor who has obtained the judgment in a better position in another State than he would be in his own.

Appellant also claims the court improperly allowed the master the sum of five hundred dollars, without proof of the number of days he had devoted to examination of the pleadings. An allowance for testimony taken was granted at the rate fixed by statute. Under the heading of "Fees to be fixed by the court" the master claimed $500 for reading pleadings, testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and law, drawing report, and passing upon objections filed thereto. He did not specify the amount of time he had spent in such work. When objections were made to this item of the master's fees the court heard the testimony of the master in open court, and made a finding that $500 was a reasonable fee for the services performed. No certificate of the evidence given by the master has been preserved.

While it is necessary that the amount of time the master devotes to service of this character be shown, (*Litwin* v. *Litwin*, 375 Ill. 90,) it must be presumed the amount of time spent by the master was disclosed to the court, when the decree recites he heard the master's testimony on objections and makes a finding of the reasonable value of the services rendered. In the *Litwin case* the lump-sum claim of the master was disallowed because he had an opportunity to explain same to the court and did not do so. In the instant case the master did make a satisfactory explanation to the court. If appellant thought the proof was insufficient he should have preserved the evidence, to enable us to pass upon it.

Both parties have argued other questions, which we have considered but do not deem it necessary to decide because the foregoing fully disposes of the merits of the case.

We are of the opinion that the order of the superior court of Cook county in disallowing the claim of appellant, and fixing the fees of the master, should be, and is in both respects affirmed.

Order affirmed.

[fols. 130-131] IN SUPREME COURT OF ILLINOIS

No. 28664

PEOPLE STATE OF ILLINOIS ex rel., PAUL F. JONES, Director of Insurance of the State of Illinois, Appellee,

vs.

CHICAGO LLOYDS, et al., CHARLES B. MORRIS, Appellant

Appeal from Superior Court Cook County 38S 1022

JUDGMENT—Filed September 19, 1945

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the order aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the order of the Superior Court of Cook County aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant. Costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Earle Benjamin Seahey, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 27th day of November, 1945.

(S) Earle Benjamin Searcy, Clerk.
Supreme Court of the State of Illinois. (Seal).

[fol. 132] [File endorsement omitted.]

[fol. 133] IN THE SUPREME COURT OF ILLINOIS

[Title omitted.]

PPTITION FOR REHEARING—Filed October 13, 1945

The appellant presents this petition for rehearing and submits that the Court has overlooked or misapprehended the following points:

I

The Constitution of the United States, the Act of Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States require that full faith and credit be given to the Missouri judgment.

[fol. 134] This point is discussed in our brief at pages 31 to 55. We think the Court

(1) has misinterpreted many decisions of the Supreme Court of the United States;

(2) has overlooked principles that have been decided by that Court or by this Court contrary to the opinion here;

(3) has erroneously concluded that the full-faith-and-credit rule is not applicable to a judgment of a sister-State in a case where the action, on which the sister-State judgment is founded, if originally commenced in the State to which the judgment is brought, could not be maintained there;

(4) has overlooked the distinction between the faith and credit required to be given to *judgments* and that required to be given to the *statutes and laws* of sister States;

(5) has misapprehended the effect which the vesting of title to the property of the company in a liquidator and the effect which jurisdiction over that property have upon the application of the full-faith-and-credit rule; and

(6) has overlooked the rule that the full-faith-and-credit clause is to be liberally construed.

The opinion divides the cases cited therein involving the full-faith-and-credit rule into four classes. However, it does not definitely assign this case to any of those classes.

First Class

The cases cited as being within this class are typical of the application of the full-faith-and-credit rule.

[fols. 135-139] Second Class

The opinion states that the second class "covers a wide field" and that full faith and credit have been denied in cases of this class. Yet, in one of the cited cases in this class full faith and credit were required. One did not involve a sister-State judgment at all and did not present any question under the full-faith-and-credit rule. One involved a judgment for a penalty, but not the full-faith-and-credit rule. And in another, the court in which the action on the judgment was brought did not have jurisdiction.

* * * * * * *

[fols. 140-145] Third Class

The opinion describes the third class of cases as those which arise "when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property, from that of the State in which it is sought to be enforced." Five cases are cited as "instances in which the judgment of one State is unenforceable in another under the full-faith-and-credit clause, if opposed to the law of the latter" (p. 8).

* * * * * * *

[fols. 146-160] Fourth Class

The opinion then refers to a fourth class of cases,—cases "where a party has an option to proceed under the laws of one of two or more States having similar laws" (p. 8). Three cases are cited.

* * * * * * *

[fol. 161] II

One purpose of the full-faith-and-credit clause was to give nation-wide application to rights judicially established in each State.

This point has been overlooked. (See our brief, pp. 33-34.

[fol. 162] III

The full-faith-and-credit clause is liberally construed and the Supreme Court of the United States has said that it is aware of no exceptions to it in the case of a money judgment on a civil cause of action.

This point has been overlooked. (See our brief, pp. 34-38.) The Missouri judgment is of that nature.

The trend is to give the full-faith-and-credit clause broader application. (Cf. *Williams* v. *North Carolina*, 317 U. S. 287, which expressly overruled *Haddock* v. *Haddock*, 201 U. S. 562.)

IV

Independently of the full-faith-and-credit clause, a money judgment rendered on a civil cause of action in one State against an insolvent insurance company whose property has been taken by a statutory receiver of another State ought to be allowed in the liquidation proceedings as a general claim.

This point has been overlooked. (See our brief, pp. 75-83.)

V

Refusal to allow the judgment to share in the debtor's property violates Section 2 of Article IV and Section 1 of Amendment XIV to the Federal Constitution.

This point has been overlooked. (See our brief, pp. 92-96.)

The contention that the appellant has been denied the privilege of suing in the receivership-courts of Illinois raises a substantial and important constitutional question and, we think, merited some comment. It may have been [fol. 163] overlooked. Rights under Section 2 of Article IV may be entirely independent of rights under the full-faith-and-credit clause. (See *Blake* v. *McClung*, 172 U. S. 239, 258.) But, in a case like this, the right to share in the debtor's property may be asserted under both clauses; and, by Section 1 of Amendment XIV, the State of the liquidation is prohibited from abridging that right. By section 1 of Article IV, a judgment creditor is entitled to have full faith and credit given to a sister-State judgment, and by section 2 of that article he has the right to maintain actions in Illinois. By section 1 of Amendment XIV, Illinois can not make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. Thus, the rights under Sections 1 and 2 of Article IV are also protected by Section 1 of Amendment XIV.

The Illinois Insurance Code, by the construction given it here, denies that right. This Court has construed the provision which vests title in the liquidator and other provisions of the Code as denying to sister-State judgment creditors the right of participation.

The contentions that refusal to allow the judgment to share in the property of the debtor deprives the appellant of his property,—the judgment,—without due process of law and also denies him the equal protection of the laws in violation of Section 1 of Amendment XIV to the Federal Constitution have not been commented upon and apparently have been overlooked.

[fol. 164]

VI

The opinion erroneously treats Chicago Lloyds as a corporation

Although at the outset (p. 2) the opinion correctly states that Chicago Lloyds is an unincorporated association, it later treats the association precisely as if it were a corporation which had received a charter from this State, into which has been read the provisions of the Illinois Insurance Code.

Chicago Lloyds received no charter from the State of Illinois into which it is possible to read the Insurance Code.

One phase of the distinction between an unincorporated association and a corporation is commented upon at pages 11, 14, 25-26, 27, 29, 30 of our reply brief. It is difficult to perceive how the rule that a statute of the State of incorporation, by which the title to the property of a corporation, will become vested in a liquidator in some circumstances, can be made to apply to an association which has received no charter from the State.

VI

The opinion erroneously states that claimant concedes he had notice of the injunction.

Although the decision here is not rested upon the injunction, the opinion states that the claimant concedes that he had notice of it. The contrary is the fact. (See reply brief, pp. 2-3.) That the restraining order affords no foundation for denying participation is shown at pages 83 to 96 of our brief and at pages 36 to 40 of our reply brief. [fol. 165] The new exception which this Court has here made to the full-faith-and-credit rule and some statements of legal principles contained in the opinion cannot be reconciled with the decisions of the Supreme Court of the United States. The holdings of many of the cases cited have been misappdehended. A tort claim is here held to be contingent. Important constitutional questions have been overlooked. It is respectfully submitted that, upon rehearing, the opinion should be revised.

Respectfully submitted, J. L. London, St. Louis, Missouri; Ford W. Thompson, St. Louis, Missouri; Tannenbaum, Polikoff & Schmidt, Attorneys for the Appellant.

[fols. 166-167] In Supreme Court of Illinois

[Title omitted]

Order Denying Rehearing—November 19, 1945

And now on this day the Court having duly considered the petition for rehearing filed by appellant herein, and being now fully advised of and concerning the premises,

doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 168] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF ILLINOIS TO THE SUPREME COURT OF THE UNITED STATES—Filed February 26, 1946

To the Chief Justice and the Justices of the Supreme Court of the United States:

Charles B. Morris, your petitioner, respectfully shows:

I

That petitioner is the appellant in the above entitled cause.

II

Statement of Case

This case came to the Supreme Court of Illinois, the Court of last resort in said State, on a direct appeal to it from the Superior Court of Cook County, Illinois, for the reason, as stated in the original opinion of said Supreme Court of Illinois rendered September 19, 1945, that—

> "Appellant's claim involves a construction of the constitution of the United States, and authorizes a direct appeal to this court. • • • "
>
> "The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as "liquidator,' appointed by the decree of the Superior Court of Cook county upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.
>
> [fol. 169] "As finally amended appellant's claim consists of a judgment rendered in the circuit court of the

city of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the superior court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1), and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment." * * *

"The question here presented, as set out in the report of the master, is as follows: 'Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment?' This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal from the superior court of Cook county. * * * Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrater of such questions arising under the full-faith-and-credit clause."

The substantive facts presented by this record are as follows: Petitioner Charles B. Morris, hereinafter referred to as appellant, is and at all times therein stated was a citizen of St. Louis, State of Missouri and for more than twenty years next prior to 1929 was engaged in the insurance business, and acting as the agent of a large number of insurance companies and writing policies of insurance, other than life, for them in the City of St. Louis and throughout the State of Missouri (R. 41). That in 1929 he was duly appointed a sub-agent to write insurance in the State of Missouri for an unincorporated and voluntary

association and aggregation of more than three hundred individuals, residents of many different States of the Union, who were associated together under a voluntary contract, and under the name "Chicago Lloyds," and conducting their said insurance business in many States under a Lloyds plan under a power-of-attorney executed by each said [fol. 170] associated individual and granted to an Illinois corporation called "Associated Underwriters, Inc."; and as such said Chicago Lloyds was licensed by the year, by yearly renewals of such license, to transact their insurance business in the State of Illinois, and to sue and be sued in that name in the State of Illinois, and also to transact their insurance business in other States by compliance with, and in conformity with the laws of such States. That said Chicago Lloyds applied to the State of Missouri for authority and license to transact its said insurance business in the State of Missouri in the name "Chicago Lloyds", and was granted a license to so transact its business in the State of Missouri and to sue and be sued in said name in said State under the laws of the State of Missouri, said laws of Missouri providing that service of process upon said Chicago Lloyds should be by personal service upon the agent and the attorney-in-fact, Associated Underwriters, Inc., or by serving the Insurance Commissioner of the State of Missouri. After acting as such sub-agent for Chicago Lloyds for a period of three years, a dispute arose in October of 1932 as to whether appellant had properly accounted for all premiums due from him to Chicago Lloyds for insurance he had written for them, which resulted soon thereafter in his being arrested on four separate occasions and confined in jail for a total of twelve days and nights, on a false and malicious charge of embezzlement made by Chicago Lloyds and its attorney-in-fact Associated Underwriters, Inc. (R. 44, 45), with the consequent effect of completely destroying his established insurance business and reputation, and causing him great financial loss, expense and humiliation.

Upon the above false charge he was required to stand trial in the Criminal Court and at the close of the evidence adduced against him, the Court sustained a demurrer to the evidence and directed the jury to acquit him (R. 45). Thereafter and while said Chicago Lloyds was continuing to transact its business in the State of Missouri, on August [fol. 171] 24, 1934, appellant filed in the Circuit Court of

the City of St. Louis a suit for damages for said false arrest and malicious prosecution, in the sum of $100,000, against said Chicago Lloyds and said Associated Underwriters, Inc., attorney-in-fact for Chicago Lloyds, said Court being a Court of general jurisdiction and having jurisdiction of the said subject matter and obtained personal service upon said defendants, who were continuing to transact said business in this State, and who entered demurrers which were overruled, and filed answers to the merits. Said cause was at issue and awaiting trial in said Missouri Court, when on February 9, 1938, a petition was filed in the Supreme Court of Cook County, Illinois at the relation of the Director of Insurance, in which petition it is stated that Chicago Lloyds is an unincorporated Association, and praying that Chicago Lloyds show cause why an order should not be entered by that Court that sufficient cause exists for the liquidation of the organization, Chicago Lloyds, and directing the Director of Insurance to take possession of its property, business and affairs and to liquidate the same in accordance with the provisions of the Insurance Code (R. 1). A consent was filed by Chicago Lloyds, through its said attorney-in-fact, to the entry of an order of liquidation, and to the liquidation of Chicago Lloyds by the Director of Insurance (R. 4), and on the same day the Court entered a decree, adjudging that sufficient cause existed for the liquidation of Chicago Lloyds and ordering that the Director of Insurance take possession of the property and liquidate the same, in accordance with Article XIII of the Illinois Insurance Code (R. 45).

At the time this decree was entered, Chicago Lloyds was the only respondent to the petition. Thereafter, or June 24, 1938, after the decree, a petition to join the individual members of said Association, also the attorney-in-fact and [fol. 172] the Trustee of its securities, and the unknown owners as parties respondent, was filed and an order joining them as respondents was entered therein (R. 8). On February 15, 1938, an order fixing the time and procedure for filing claims was entered, requiring claims to be presented to the Liquidator on or before November 15, 1938. Said Liquidator thereafter, by mail addressed to appellant in the City of St. Louis, notified appellant to present his verified proof of claim on or before November 15, 1938, stating that he had been directed to take possession and liquidate the property of Chicago Lloyds by order of the

Supreme Court of Cook County February 9, 1938. Thereafter on September 21, 1938, and in response to said notice, appellant mailed his verified claim to said Liquidator, based upon said damage suit then pending in the Circuit Court of the City of St. Louis, Missouri (R. 14, 58) and attached thereto a copy of the petition in said damage suit, and stating that said suit was awaiting trial in the Circuit Court of the City of St. Louis, and that when judgment thereon was obtained, he would file a supplemental and amended claim (R. 14, 58). Thereafter, on the 17th day of March, 1941 (R. 49) said tort case was set for trial in said Circuit Court of the City of St. Louis. Thereupon the attorney for Chicago Lloyds withdrew and notified the Court that he withdrew on instructions of said Liquidator (R. 22), whereupon said trial proceeded. Plaintiff waived a jury and the cause was submitted to the Court on the petition of plaintiff and the answers of Chicago Lloyds and Associated Underwriters, Inc., and the evidence adduced, and the Court took the case under advisement as submitted, and thereupon directed the Clerk of said Court to write a letter to said Liquidator (R. 53), notifying him of the above and requesting his reaction thereto. Said Liquidator's attorney answered said letter on March 26th, (R. 59), stating that said attorney for Chicago Lloyds withdrew on instructions, and that Chicago Lloyds was being liquidated in the proceeding pending in the Supreme Court of Cook County, Illinois, and that it is the Liquidator's position that the plaintiff in said suit is [fol. 173] enjoined from obtaining or attempting to obtain preferences, judgments, attachments, or other like liens, until the further order of the Court (R. 59-60); "that liquidations proceedings in this state being an action in rem is analogous to a bankrupt proceeding, and the injunction order is good without notice and without service of process upon a violator of the same; that while they fully appreciate that the injunction does not prevent the Court from entering judgment, they believe that plaintiff, by asking the Court to proceed to judgment against Chicago Lloyds, is in direct violation of the injunction, and should he bring such judgment into Illinois and attempt to enforce it here, he will be violating the injunction order." (R. 60)

Thereafter, on April 17, 1941, said Circuit Court of the City of St. Louis duly entered a joint and several judgment in favor of appellant Morris, and against Chicago Lloyds

and Associated Underwriters, for the sum of $35,000.00 actual damages and $15,000.00 punative damages, a total of $50,000.00 (Ex. 2, R. 49), with interest thereon at 6 per cent per annum until paid, together with costs, and ordered an execution issued thereon.

Thereafter, on August 2, 1941 (R. 23), appellant Morris filed with said Liquidator his supplemental and amended claim for $50,000 based on said Missouri judgment and attached thereto a duly authenticated copy of said judgment and of said judgment roll.

Thereafter, on June 10, 1942, the said Liquidator, without notice and without any hearing whatsoever before him upon said claim so reduced to judgment, filed in said Superior Court of Cook County his report on claims and recommended the disallowance of appellant's claim, and mailed a copy of his report to appellant, wherein he gave as a reason for his recommendation of disallowance that the judgment was obtained subsequent to the entry of the order of liquidation and in violation of an injunctive order entered in the case on February 9, 1938, and subsequent to [fol. 174] the date set by the order of the Court for the filing of claims in the proceeding (R. 10).

To the report of the Liquidator recommending the disallowance of said claim, appellant properly filed his exception (R. 10-16), setting out that there had been no hearing upon the claim before the Liquidator, and that the said recommendation of disallowance was entirely "ex parte"; and that the claim and amended claim were properly filed; that the Liquidator had given an improper and unlawful extraterritorial effect to said injunctive order made by the Court, and failed to find, or state, or make known to the Court in his recommendations that claimant is and was a non-resident of Illinois, and a citizen of St. Louis, Missouri, and had instituted a suit against Chicago Lloyds in the year 1934, long prior to the entry of the decree directing liquidation, and that the said suit was pending and was being defended by Chicago Lloyds in the Circuit Court of St. Louis, Missouri, after service of process as shown by the record; and was also so pending at the time of the entry of the order directing liquidation, February 9, 1938; that the Liquidator had failed to give the judgment of the Circuit Court of the City of St. Louis, State of Missouri, that full faith and credit to which it is entitled by

reason of the provisions of Article IV, Section 1 of the Constitution of the United States, and further that claimant had been denied as a citizen of the State of Missouri the privileges and immunities of citizens of the State of Illinois, as guaranteed by Article IV, Sec. 2 of the Constitution of the United States, and that the Illinois Court had no right to enforce any law of the State of Illinois which abridged the privileges of the claimant as a citizen of Missouri and of the United States, or to deny to him as such citizen of Missouri the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution by Section 1 thereof; and further, that he was entitled to the benefit and protection of the Sixth Article to the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions of the Con- [fol. 175] stitution of the United States and the laws of the United States made under and pursuant thereof (R. 16).

Thereafter said Superior Court of Cook County appointed a Master to hear and consider said objections and exceptions, and ordered him to file his recommendations and report to the Court (R. 17). The appellant offered in evidence before the Master the judgment and judgment roll of the Circuit Court of the City of St. Louis in favor of the claimant and against Chicago Lloyds for the sum of $50,000.00. There was no evidence offered by the Liquidator tending to show that the claimant Morris was a party to said liquidation proceedings, wherein the decree of February 9, 1938 was entered; or that he was ever served with notice of said injunctive order, or that he had ever been cited and found guilty of contempt of said order. The only evidence offered by the Liquidator was the notice to appellant to file his claim with the Liquidator within the time fixed by the Court (R. 33, also Additional Abstract, p. 16), and the original claim filed by appellant in response to said notice, the amended claim filed on August 2, 1941 (R. 23), and the said two letters above mentioned (R. 53 and 59), viz., one directed by the Judge of the Circuit Court of the City of St. Louis, and the other an answer thereto by the attorney for said Liquidator.

The Master found that, on February 9, 1938, the petition praying for an order that sufficient cause exists for liquidation of "Chicago Lloyds," an unincorporated association of individuals transacting an insurance business in the

State of Illinois and other States," was filed (R. 18-20, 56); that it appears that a resolution was adopted by the Directors of Associated Underwriters, Inc., Attorney-in-Fact for Chicago Lloyds, consenting to the entry of such an order, and consenting to the liquidation of Chicago Lloyds by the Director of Insurance. A decree was entered on February 9, 1938, directing the Director of Insurance to take possession of the property of "Chicago Lloyds", and [fol. 176] to liquidate the same in accordance with the terms of the Illinois Insurance Code (R. 20); that this decree contained an injunctive order, a portion of which the Master incorporated into his report (R. 21), which order among other things "restrained all persons from in any manner interfering with the possession of said Director of Insurance, in or to the books, records or property of Chicago Lloyds, or with the liquidation of its business, until the further order of the Court; or from obtaining or attempting to obtain preferences, judgments, attachments or other like liens; and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in possession and control of the Liquidator."

The record discloses that at no time has appellant ever asked for any preference, lien or any position of advantage other than the right to share pro rata with the other general creditors, without any preference or priority whatsoever.

There is no finding by the Master that appellant was ever served with a copy of the injunction, or had any notice thereof. It was stipulated that the appellant received notice from the Liquidator to file a verified claim with the Liquidator (R. 33). (This notice is set out p. 16 Additional Abtsract; it contains no reference to any injunctive order.) In response to that notice, he filed his original and amended claim. There was no stipulation that appellant had notice of the injunction order, or any evidence whatever from which such notice could be deduced. Counsel for the Liquidator specifically reserved the right to produce evidence on that (R. 34) (and Additional Abs. 5) but produced none.

The facts as summarized by the Master from the evidence submitted, both oral and documentary, are set out in Record pages 18 to 24. On pages 24, 25 and 26 are set out the conclusions of law. Beginning on page 26 are set

out his recommendations and a transcript of the proceedings and the evidence taken before the Master.

[fol. 177] The Master in his "Conclusions of Law" (R. 24), finds "that there is no dispute on any material fact in the matter involved in this reference and the only question involved is a question of law, stated thus":

> "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the Court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment."

The Master recommended (R. 26) that "the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objection to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding." (Note: The Statute of Limitations (two years) would have run against the claim if it had to be filed denovo. Sec. 1016 R. S. Mo. 1939 (Sec. 864, R. S. Mo. 1929). Sec. 15, Chap. 83, R. S. Ill. 1937.

Objections (which by order of said Superior Court were to be treated as exceptions (R. 17) were filed by appellant to the Master's Report (R. 34-40), wherein appellant excepted and objected to the said report for the reason that he had failed to give full faith and credit to said Missouri judgment duly and properly authenticated in support of plaintiff's claim, in violation of Section 1 of Article IV of the Constitution of the United States and the Acts of Congress passed in pursuance thereof, providing for full faith and credit to said Missouri judgment, and that to refuse to accord full faith and credit to said judgment is to deny appellant his rights under Section 2 of Article IV of the United States Constitution, and is a violation of Section 1 of Amendment XIV to the United States Constitution (R. 38).

The case was thereupon argued before the Superior Court of Cook County upon said exceptions (R. 24-40). The final order or decree confirming the Master's Report, with respect to the claim of Charles B. Morris, was entered Sep-

tember 28, 1944 (R. 61). The Court found (R. 61) "that [fol. 178] the findings of the said Master in Chancery are proper, true and correct, and that the objections to the Master's report filed by the claimant * * * (which were ordered to stand as exceptions before the Court), were properly overruled by the Master." (R. 61). "That the judgment in favor of Charles B. Morris in Case No. 206424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator, and should not be considered in this liquidation proceedings." "That Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206424 and the other evidence introduced by claimant, as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds."

The Court "Orders, adjudges and decrees: 1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed. * * * 3. That said claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommendation that said claim be disallowed are overruled, and said report on claims and the recommendation of disallowance of said claim is approved and confirmed, and said claim disallowed in accordance with the recommendations contained in the Master's report." (R. 61).

Thereafter the appellant duly prosecuted his appeal to the Supreme Court of Illinois, which was the Court that had jurisdiction (R. 64). Appellant filed his brief in said Supreme Court and therein (pp. 9-11) set out the several errors that be assigned for reversal, as required by the Civil Practice Act of Illinois and Rule 39 of said Supreme Court; and therein specifically contended that the interpretation, construction, application and effect given to the injunctive statute, Section 189 of the laws of the State of Illinois, 1937, Chapter 73, referred to as the Illinois Insurance Code, and upon which said Superior Court had [fol. 179] given extra-territorial effect to the said injunctive order entered February 9, 1938, is unconstitutional because there is and was no finding by the Master and no evidence whatever in the record, that appellant had been a party to said liquidation proceedings; or had been served

with said injunctive order; or had any notice whatever thereof; or that the continued prosecution of said tort action in the Missouri Court would constitute a violation of said injunctive order; and that therefore to so apply said law as a ground and reason and as a penalty by refusing to give full faith and credit to said judgment, was arbitrary, erroneous and a complete denial and disregard to appellant's constitutional rights secured to him as a citizen of the State of Missouri and of the United States by Article IV, Sections 1 and 2; also Article VI; and the Fourteenth Amendment to the Constitution, thus depriving him of his property without due process of law and abridging his privileges and immunities and denying to him the equal protection of the law.

In answer to said original brief filed by appellant in said Supreme Court, the appellee filed a brief wherein for the first time, in addition to Section 189, the appellee contended that said Section 189 in connection with Sections 191, 193, and 196, when legally interpreted, construed, applied and given effect, justified the Supreme Court in affirming the judgment on the additional ground that notwithstanding respondent Chicago Lloyds was in fact a mere voluntary unincorporated association of individuals, transacting an insurance business in many other states of the Union, including the State of Missouri, besides the State of Illinois, and, notwithstanding it was not in fact a corporation having a charter from the State of Illinois and created and existing by virtue of the laws of Illinois, and also notwithstanding no petition had been filed or any order made in said statutory liquidating proceeding pronouncing Chicago Lloyds legally dissolved in conformity with Section 196, that nevertheless the legal effect of Chicago Lloyds being ordered liquidated under said Section 189, and the [fol. 180] vesting of title to their assets and property in such statutory liquidator, was to abate any and all actions pending against said Chicago Lloyds in Sister States and to completely dissolve said unincorporated association of individuals as an entity; (pp. 6-11 of said brief are hereafter set out); and further contending that the judgment rendered against said association Chicago Lloyds in said sister States subsequent to February 9, 1938, was therefore void and not entitled to the benefit of the full faith and credit clause of the Constitution of the United States, and that such an effect given to said Sections 189, 191, 193 and

196 would not constitute a violation of any of appellant's constitutional rights.

Thereafter appellant filed in said Supreme Court his reply brief, and on pages 25, 26 and 28, and in his summary on page 41 of said brief, met said new contentions and subsequently orally presented his said contentions without avail.

The errors summarized on pages 11 and 12 hereof, are specifically set out on pages 9-11 of Appellant's original brief, as follows:

"1. In finding or holding that the findings of the master are proper, true and correct and that the claimant's objections to the master's report were properly overruled; in overruling the claimant's exceptions to said report; and in approving said report.

"2. In overruling the claimant's objections to the report of the liquidator on the claim based upon the Missouri judgment and to the recommendation of the liquidator that said claim be disallowed; in approving the liquidator's tenth report on claims in so far as it recommended the disallowance of the claim on said Missouri judgment; and in disallowing said claim.

"3. In finding that the Missouri judgment in favor of claimant and against Chicago Lloyds, et al, has no force or binding effect upon the liquidator and should not be considered in the liquidation proceeding as evidence of the liability to claimant or of the amount of his claim; and in failing to hold that the liquidator was estopped by said judgment, and that it was res judicata and binding and conclusive evidence of the claim of appellant.

"4. In failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States, the Act of Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States; and in failing to give full faith and credit to said judgment.

"5. In holding that the decree entered February 9, 1938, restrained claimant from prosecuting to judg- [fol. 181] ment the action pending in Missouri.

"6. In failing to hold that the decree entered February 9, 1938, did not restrain claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have power or authority to restrain the claimant from prosecuting that action inasmuch as the judgment rendered therein would not be a lien upon the property in the possession of the liquidator.

"7. In failing to hold that the decree entered February 9, 1938, did not restrain the claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have jurisdiction over the claimant.

"8. In failing to hold that Section 189 of the Illinois Insurance Code (which the court below construed as warranting the entry of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no jurisdiction, restraining him from prosecuting an action pending in a sister State, and as warranting on the strength of that injunction, the refusal to allow a claim, based on a judgment obtained in the sister State, to share in the property of Chicago Lloyds in the possession of the liquidator), is unconstitutional for the reasons (1) that, so construed, it is inconsistent with Section 1 of Amendment XIV of the Federal Constitution because it deprives the claimant of his property,—(the right to prosecute the suit theretofore commenced in a sister State and the right to have his claim on a judgment rendered in his favor in that State allowed as a claim against Chicago Lloyds and entitled to share with other creditors in the assets of Chicago Lloyds)—without due process of law; (2) that, so construed, it abridges the privileges and immunities of citizens of the United States, guaranteed by Section 2 of Article IV of the Federal Constitution, by denying to claimant the right to bring suit on the Missouri judgment to which Illinois, by Section 1 of Article IV, is required to give full faith and credit; (3) that, so construed, it invades the privileges and immunities of claimant guaranteed by Section 1 of Amendment XIV to the Federal Constitution; and (4) that, so con-

strued, it denies to claimant the equal protection of the laws guaranteed by that section.

"9. In failing to hold that the court could not give extraterritorial effect to the injunction entered February 9, 1938, by refusing to give full faith and credit to the judgment of Missouri."

The contentions of appellee, summarized on pages 12 and 13 hereof. are specifically set out on pages 6 to 11 of Appellee's Brief as follows:

"A. Under Paragraph 803 of Chapter 73, the Liquidator is vested with title to all property, contracts and rights of action of the company as of the date of the liquidation order.

[fol. 182] "B. Paragraph 806, Chapter 73, provides that the rights of all creditors shall be fixed as of the date of the order of liquidation unless otherwise ordered, and that order provided such rights were fixed as of noon on February 15, 1938 (Abs. 5).

"C. Paragraph 801, Chapter 73, provides for the issuance of an injunction 'to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens,' and such an injunction was issued (Abst. 6).

"When a state has adopted a policy governing the liquidation of insurance companies, that policy is binding upon creditors wherever they may be located. A judgment taken against the insolvent subsequent to the date of the entry of the liquidation order is not entitled to recognition in the liquidation proceeding (citing cases).

"All parties, whether policyholders or creditors, dealing with an Illinois insurance company have presumptive knowledge of its charter provisions and the statutory law governing its liquidation. (Citing cases.)

"The laws of Illinois governing the liquidation of insurance companies and judicial proceedings thereunder are entitled to full faith and credit in the courts of sister states. (Citing cases.)

"A corporation carries with it all charter provisions governing it into each state in which it carries

on business, and all parties doing business with it are presumed to know the law governing it and are bound thereby. (Citing cases.)

"B. The general rule in a statutory liquidation proceedings where a statutory liquidator is vested with title is that judgments taken against the insolvent company, subsequent to the entry of the liquidation order, are not provable in the liquidation proceedings. (Citing cases.)

"Judgments taken against an insolvent insurance company, subsequent to the order of dissolution, are subject to collateral attach in the liquidation proceedings." (Citing cases.)

Pages 25, 26, and 28, and the summary on page 41 of appellant's reply brief, referred to on page 13 hereof, are as follows:

"He relies principally upon Section 191 of the Code (Ill. Rev. Stat., Chap. 73, Sec. 803), which provides that title to the property of a company in liquidation is vested in the Director. (Brief, p. 28) Cases involving corporations are cited for the proposition that the title vested in the Director is recognized in other jurisdictions. The reasoning upon which the decisions in those cases rests is that a State, which has created a corporation, may say who the agents of that corporation are to be in case its charter is forfeited. (See quotation from Relfe v. Rundle, on pages 32 and 33 of the brief of appellee.) That reasoning is not applicable to associations which are not created by a State. Chicago Lloyds received no charter from the State of Illinois. (Roach & Co. v. Harding, 348 Ill. 454, 464; 7 C. J. S. "Associations" 19, 21.) It was formed by act of its [fol. 183] members, many of whom are residents of States other than Illinois. (Claimants' Exs. Nos. 15 and 16.) It transacted business in Illinois. It also transacted business in Missouri, and it may have done so in other States. If an association owns property located in more than one State, which of the States has the power of designating the 'agent' (if he can be called an agent of the association) to liquidate all its property wherever located? A corporation, which is created by the laws of one of the States, carries its

charter and the laws of the State of its creation governing it into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. Chicago Lloyds has no charter into which Section 191 of the Code can be read. Consequently, the theory whereunder a statutory liquidator of a corporation succeeds to the title to its property located in another State does not apply to an association." (Appellant's Reply Br. pp. 25, 26.) • • •

"At this point in his argument the Director has injected a new contention, not against the provability of the judgment but against its validity. He argues that the judgment is invalid because the laws of Illinois are entitled to full faith and credit in Missouri and that under the full faith and credit clause the Missouri court 'should have refused to enter judgment against Chicago Lloyds.' (Brief, p. 35.) He forgets that, but a few pages before, he argued that a State is not required to give faith and credit to the statutes of sister States. (Brief, pp. 19-26.) Surely, the courts of one State are not to be ousted of their jurisdiction by legislation of another." • • • Reply Br. p. 28.) • • •

"B. Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate its property and a judgment rendered after the entry of such an order is not void.

"B. Chicago Lloyds continued to remain capable of being sued after its certificate of authority to transact business in Illinois expired, even assuming that that certificate was not renewed.

"C. Illinois is required to give full faith and credit to the Missouri judgment.

"The fact that the liquidation proceeding here is statutory does not confer exclusive jurisdiction to l']uidate claims upon the supervising court or warrant that court in disallowing claims on judgments rendered by competent courts of sister States after the entry of the order of liquidation, where the company is an association which has not been dissolved.

"A. Assuming that the Director of Insurance of the State of Illinois became vested with title to all property of Chicago Lloyds, it does not follow, as an incident of that title, that claims against it may not be liquidated in competent courts of sister States.

"B. Assuming that the claimant is presumed to know that any claim he might have against Chicago Lloyds would be 'dealt with' in accordance with the provisions of the statutes of Illinois, it does not follow that claims against Chicago Lloyds may not be liquidated in competent courts of sister States." (Reply Br. pp. 41, 42.)

[fol. 184] The Supreme Court affirmed the judgment of the lower Superior Court of Cook County, and in and by its opinion discloses clearly that it adopted said contentions of appellee; and by so interpreting, construing, applying and giving effect to said sections of said Illinois law, it wrote an opinion thus justifying the violation of appellant's constitutional rights, filing and entering said opinion September 19, 1945.

Thereafter and within the time provided by the Rules of said Supreme Court, appellant filed a petition for rehearing of said cause, wherein he specifically directed the attention of the Court to said erroneous interpretation, application and effect that it had given to said Illinois statutes and that by such effect all of appellant's constitutional rights had been disregarded and denied, which said petition for rehearing was overruled and denied on the 19th day of November, 1945. Thereafter said original opinion was modified in certain respects by order of the Court and entered on November 26, 1945.

No further steps can be taken in any Illinois Court, and appellant's only remedy lies in an appeal to the Supreme Court of the United States from the said final judgment.

III

The United States Supreme Court has jurisdiction of this cause on appeal under and by virtue of Section 344 (U. S. C. A.) Title 28 (Judicial Code, Sec. 237 Amended) providing that a "final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had * * * where there is drawn in question

the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

[fol. 185] Meyer vs. Fleming, et al., Trustees, decided 2/4/46 by U. S. Sup. Ct.;
Charleston etc. Ass'n. vs. Alderson, Vol. 89, p. 621, Lawyers Advance Opinions, Feb. 26, 1945;
Memphis, etc. Gas Co. vs. Beeler, 315 U. S. 649;
John B. King Mfg. Co. vs. City Council of Augusta, 277 U. S. 267;
Standard Scale Co. v. Farrell, 249 U. S. 571;
Williams v. Bruffy, 96 U. S. 716;
Zucht vs. King, 260 U. S. 174;
Beinman vs. City of Little Rock, 237 U. S. 171;
Atlantic Coast Line, etc. vs. City of Goldsboro, 232 U. S. 548;
Bacon vs. Texas, 163 U. S. 207.

By an Act of Congress of January 31, 1928, c-14, Par. 1, 45 Statutes at Large, p. 54, the word "appeal" was substituted for "writ of error."

In the said cause there is drawn in question the validity of Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208, Chapter 73 Rev. Stat. Ill. 1937, referred to as the Illinois Insurance Code, and the decision being in favor of their validity, the appellant contending that the said holding violated the above mentioned constitutional provisions of the Constitution of the United States, which in the interest of brevity are not here repeated.

IV

Appellant contends that said statutes as interpreted, construed and enforced by the Supreme Court of Illinois in affirming the decree of the Superior Court of Cook County, have deprived appellant of his constitutional rights secured and guaranteed to him by Sections 1 and 2 of Article IV, Sections 1 and 2 of the Fourteenth Amendment, and Article VI of the Constitution of the United States, and particularly by so interpreting, construing and enforcing them holding the said Statutes valid.

Wherefore, Petitioner prays for the allowance of an

appeal from the said Supreme Court of the State of Illinois to the Supreme Court of the United States, in order that the decision of the Supreme Court of Illinois may be examined, reviewed and reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Illinois, may be sent to the Supreme Court of the United States, as provided by law.

[fols. 186-188] Your petitioner further prays that an order be made fixing the amount of security which the petitioner, as appellant, shall give and the approval of such bond as required in this case, also that an order be duly entered recalling the mandate.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the Assignment of Errors filed herewith.

A copy of the opinion as originally filed, together with the amendment thereto, is attached to the Jurisdictional Statement filed herewith.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius Polikoff, 111 West Washington, Chicago, Ill., Attorneys for Appellant.

Tannenbaum, Polikoff & Schmidt, Of Counsel.

[fol. 189] [File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR—Filed February 26, 1946

Upon the filing of appellant's petition for an appeal to the Supreme Court of the United States, and filed therewith and hereby made a part thereof, in conformity with Rule 9 of the Supreme Court of the United States, appellant assigns the following errors committed by the Supreme Court of Illinois, the Court of last resort in Illinois, upon which he relies for a reversal:

I

That in and by its said decision the Supreme Court of Illinois, the Court of last resort in the State of Illinois, has

erred in that it has so interpreted, construed, applied and given effect to Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208 of Chapter 73 of the Revised Statutes of Illinois 1937 (referred to in said opinion as Article XIII of the Illinois Insurance Code), in sustaining their validity, as to constitute said laws repugnant to and violative of appellant's constitutional rights, secured to him as a citizen of St. Louis, State of Missouri and of the United States by Article IV, Sections 1 and 2, Article VI, and the Fourteenth Amendment to the Constitution of the United States, sections 1 and 2 thereof, as hereinafter separately and specifically enumerated; which errors were called to the attention of said Court by Appellant in his original brief, his reply [fol. 190] brief, and his petition for a rehearing filed in said Court.

II

That in and by its decision upholding the validity of said sections of said Illinois laws and thereby denying full faith and credit, or any credit whatsoever, to appellant's Missouri judgment, the Supreme Court of Illinois, as justification for its decision, interpreted, construed, applied and gave such an effect to said Sections 187, 188 and 189 as to render said Sections repugnant to the said provisions of the United States Constitution and [redacted]uthorizing the court of the State of Illinois to [redacted]an injunctive order in the proceeding brought in the State of Illinois under said laws against Chicago Lloyds (an unincorporated association of individuals who were transacting an insurance business in the State of Illinois under an Illinois license, and also in Missouri under a Missouri license, as well as in other states), that was binding on appellant.

Said Section 189 provides that an injunction may be issued when deemed necessary to prevent interference with the proceedings or with the Director's possession or control or title, rights or interests, or to prevent interference with the conduct of the business by the Director, or that may be deemed necessary to prevent waste of assets, or the obtaining of preferences, judgments, attachments, or other like liens, or the making of any levy against such company or its property and assets while in the possession and control of the Director.

The Court held that the injunction so made and entered by said Illinois Court, pursuant to said Statute, was binding

upon the appellant herein, and entitled to be given extra-territorial effect and enforcement, and to restrain appellant from continuing to prosecute a tort action filed in the State of Missouri in the year 1934 (four years prior to said liquidation proceedings), in a Court of Missouri which had [fol. 191] general jurisdiction and jurisdiction of the subject matter and also personal service upon said "Chicago Lloyds", and which case was at issue and awaiting trial in Missouri at the date of the said injunctive order, notwithstanding appellant was not brought before said Illinois Court when said injunctive order was entered, and was not served with process in said proceeding; and had no notice whatever of said order, and against whom no citation for contempt of said order was ever applied for or issued by said Court, and no order entered therein finding him guilty of contempt of said order; and notwithstanding, in addition, that appellant's claim was not based upon any contractual relationship to said *un*incorporated association of individuals, Chicago Lloyds, whatsoever, but was based upon a tort, committed against him in the State of Missouri in 1932, for which he was there in said State of Missouri seeking redress.

Said Supreme Court of Illinois erroneously held that said injunction was violated by continuing to prosecute said tort action to judgment subsequent to the entry of such an injunctive order; and for that reason, that by so violating said injunctive order, and as a penalty therefor, the Courts of Illinois are not required to accept a properly authenticated copy of said Missouri judgment as proof of the liability and amount of appellant's claim against the assets of said Chicago Lloyds, and are not for that reason required to give full faith and credit to said judgment.

III

That the Supreme Court of Illinois erroneously denied full faith and credit, or any credit whatever, to appellant's said Missouri judgment for the further reason stated by it: that it so interpreted, construed and gave legal effect to said Section 191 of said Illinois law "vesting title in said Illinois Liquidator." and to said Section 196, authorizing the dissolution of a domestic insurance "corporation" created and existing under and by virtue of the laws of the [fol. 192] State of Illinois, as authorizing, in a liquidation

proceeding instituted under said Sections, the dissolution of an *un*incorporated association of individuals doing business in, and licensed by, the State of Illinois to transact their insurance business in the State of Illinois, even though they were likewise licensed and transacting their insurance business in other States, among them the State of Missouri.

Said Court gave effect to said Section 191 as transferring the title to all the assets of "Chicago Lloyds" wherever located; and by so construing and applying the "vesting of title to said assets in said statutory liquidator," said Supreme Court erroneously held that all actions (whether for tort or on contracts) pending in sister States, were by said "vesting of title," abated; and from and after such "vesting of title in said statutory Liquidator," the legal existence of said unincorporated association of individuals was dissolved and terminated; and that all judgments entered in sister States subsequent to said date of vesting of title, (February 9, 1938) were void, and were entitled to be completely disregarded, and denied any protection or faith and credit as provided by Article IV of the Constitution of the United States; or as provided by the Fourteenth Amendment to the Constitution; said Court erroneously deciding that such an interpretation and application of a law of the State of Illinois is valid, and is not repugnant to or violative of Article VI of the Constitution of the United States.

IV

That the Supreme Court of Illinois erred and violated Article IV of the United States Constitution requiring full faith and credit to be given to the said Missouri judgment, by improperly interpreting, construing and giving effect to Sections 194 and 208 of the said Illinois Insurance Code and by its interpretation held them valid and not repugnant to appellant's said constitutional rights.

[fol. 193] Said Section 194 provides that the rights and liabilities of the domestic company and of its creditors, except those holding contingent claims * * * shall, unless otherwise ordered by the Court be fixed as of the date of the entry of the order directing liquidation; and said Section 208 provides also that the Liquidator shall notify all persons who may have claims against said domestic company * * * and who have not filed proper proofs thereof, to present the same to him at the place

specified in such notice within such time as may be fixed by the order of the Court; and that the last day for the filing of such proofs of claims being thereby required to be specified in the notice; and the said Section 208 further provides that said notice shall be given in a manner determined by the Court; and clause 2 of said Section 208 expressely provides, that proofs of claim on good cause shown, may be filed subsequent to the day specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

The Record, page 2, shows that on the 9th day of February, 1938 the assets of these unincorporated individuals, were about $1,507,700.07, and their liabilities aggregate in excess of $1,203,512.17, leaving a surplus of $304,187.90. The Illinois law requires a surplus of not less than $500,000, Section 99 Illinois Insurance Code.

Said Court in construing the said mentioned sections 194 and 208 of the said Illinois Insurance Code as valid, erroneously decided that although appellant on the 21st day of September, 1938, filed with the said Liquidator within the time fixed by the Court (November 15, 1938) (Addl. Abs. pp. 1, 2) his verified claim, (stating therein that it was based upon a petition for damages accrued to him in October of 1932 in the State of Missouri, which he filed in the Circuit Court of the City of St. Louis, Missouri on August 24, 1934, and which was then pending, and attached thereto copy [fol. 194] of said petition, and further stated in said verified claim, that he would file a supplemental and amended claim when judgment has been obtained in said Missouri Court), that nevertheless, since appellant had not filed with said Liquidator his amended claim, to-wit, the *final judgment* rendered in said Missouri Court April 7, 1941, until August 2, 1941 (and therefore three years after November 15, 1938, the date fixed by said Court under said sections of the laws of the State of Illinois), for *that* further reason, said Supreme Court erroneously held that said final judgment was not entitled to full faith and credit, and that to permit it to be allowed as a claim and to participate in the distribution of the assets of said judgment debtor, would violate the provisions of said Illinois laws. Thereby, said Court not only applied an Illinois Statute that by such an interpretation it held was valid, but also held that it was not repugnant to, and would not and did not violate said Article VI of the

Constitution of the United States and the provisions of said Article IV, requiring that said judgment be given full faith and credit; and in addition, actually misinterpreted and misapplied said Illinois law itself.

Said law expressly provides, under clause 2 of said Section 208, that proofs of claim, on good cause shown, may be filed subsequent to the date specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

Thereby, even if said sections of said Illinois law, so held to be valid and not repugnant to nor violative of said constitutional rights secured to appellant under said Article IV, it has been thus so erroneously applied by said decision, as to be repugnant to and to violate the said Fourteenth Amendment,—in that, said Supreme Court has by its decision and interpretation of said law violated and disregarded appellant's constitutional rights secured to him by section 2 of Article IV: in that by such an interpretation and application sustaining the validity of the law of Illinois [fols. 195-196] as not repugnant to appellant's rights as a citizen of Missouri and of the United States, it has abridged his privileges and immunities as a citizen of Missouri, viz: (to have his claim recognized and allowed as provided by said clause 2 of said Section 208, "subject to all allowed claims, proofs of which had been filed before said filing date, November 15, 1938"). That in addition, said interpretation, application and effect given said law is repugnant to and violative of Section 1 of the Fourteenth Amendment to the Constitution, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the law.

Further, this record discloses that no distribution of assets of said Chicago Lloyds had been made when said Missouri judgment was filed with said Liquidator on August 2, 1941; and that said Liquidator filed his Tenth Report on Claims June 10, 1942 (R. p. 9) and that claims were being tried and approved or disapproved, and the matter of whether or not all claims against said Chicago Lloyds that had been filed "on or before November 15, 1938"

could be paid in full, or only *pro rata* had not been determined, when said Liquidator recommended the disallowance of appellant's claim.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius Polikoff, 111 West Washington, Chicago, Ill., Attorneys for Appellant; Tannenbaum, Polikoff & Schmidt, Of Counsel.

[fol. 197] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 26, 1946

The petition of Charles B. Morris for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Illinois, and the Assignment of Errors filed therewith, together with the Jurisdictional Statement required by Rule 12 of this Court, and the record of said cause, having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois entered in this cause November 19, 1945, as prayed in said petition, and that the Clerk of the said Supreme Court of the State of Illinois shall within Forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and seal of the Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein.

It is further ordered that said Charles B. Morris, Appellant, shall give good and sufficient security in the sum of 250.00 Dollars, that said appellant shall prosecute said appeal to effect, and if said appellant fails to make his plea good, he shall answer all damages and costs.

[fols. 198-199] Wiley Rutledge, Justice of the Supreme Court of the United States.

February 14th, 1946.

[fols. 200-204] Bond on appeal for $250.00 approved and filed Feb. 26, 1946, omitted in printing.

Approved this 18th day of February, 1946.

Wiley Rutledge, Associate Justice.

[fols. 205-210] Citation in usual form showing service on Ferre C. Watkins, et al., filed Feb. 26, 1946, omitted in printing.

[fol. 211] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE—Filed February 26, 1946

The Clerk of the Supreme Court of Illinois is requested to prepare for transcript to the Supreme Court of the United States his record, as follows:

1. Abstract of the Record;

2. Additional Abstract of the Record;

3. Pages 6 to 11 of Appellee's Brief filed in the Supreme Court of Illinois;

4. Pages 25, 26, 28, 41 and 42 of Appellant's Reply Brief filed in the Supreme Court of Illinois;

5. Assignments of Error in the Supreme Court of Illinois, pages 9 to 11 inclusive, of Appellant's original brief;

6. Petition for rehearing filed by Appellant;

7. Order of November 19, 1945, denying petition for rehearing;

8. Original opinion of the Supreme Court of Illinois affirming the decree of the Superior Court of Cook County, Illinois and the amendment to said opinion;

9. Judgment of the Supreme Court of Illinois on affirmance of the decree of the Superior Court of Cook County, Illinois;

[fol. 212] 10. Order of the Supreme Court of Illinois denying appeal to the United States Supreme Court;

11. Petition for appeal to the Supreme Court of United States upon which the order was entered allowing said appeal;

12. Jurisdictional statement filed therewith;

13. Assignments of error filed with the same;

14. Order of the Supreme Court of the United States granting appeal to the United States Supreme Court, with Clerk's Certificate;

15. Appeal Bond and approval thereof;

16. Citation to appellee;

17. Proof of service of citation;

18. Notice dated February 18, 1946 in accordance with Rule 12 of the Rules of the Supreme Court of the United States with proof of service thereof;

19. Original statement directing attention to the provisions of paragraph 3 of Rule 12 of the Rules of the United States Supreme Court and affidavit attached to the same;

20. This praecipe for record and proof of service thereof.

J. L. London, 418 Olive Street, St. Louis, Missouri; Ford W. Thompson, 818 Olive Street, St. Louis, Missouri; Julius Polikoff, 111 West Washington, Chicago, Illinois, Attorneys for Appellant.

Tannenbaum & Polikoff, Of Counsel.

[fols. 213-215] Receipt is acknowledged of copy of the foregoing praecipe for record this 25th day of February, A. D. 1946.

Ferre C. Watkins.

Glenn, Real & Browning, attorneys for appellee N. P. Parkinson, Director of Insurance of the State of Illinois.

[fol. 216] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

COUNTER-PRAECIPE—Filed March 6, 1946

The Clerk of the Supreme Court of Illinois is requested to include in the transcript of record to the Supreme Court of the United States in the above entitled cause, in addition to the documents requested in the Praecipe filed herein by counsel for the Appellant, Charles B. Morris, the following:

1. Appellee's Statement Disclosing Matter or Ground Making Against the Jurisdiction of the Supreme Court of

the United States as Asserted by Appellant, Filed in Accordance With the Provisions of Paragraph 3, Rule 12, of the Supreme Court of the United States, and Motion to Dismiss Appeal or Affirm Judgment of Supreme Court of Illinois.

Ferre C. Watkins, General Counsel, Department of Insurance of the State of Illinois, of Chicago, Illinois; Otis F. Glenn; Raymond G. Real; Otto W. Barnes, All of Chicago, Illinois, Attorneys for Appellee, N. P. Parkinson, Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds.

[fols. 217-218] Copy of the foregoing Counter-Praecipe for additional record received this 4th day of March, A. D. 1946.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius A. Polikoff, 111 West Washington St., Chicago, Ill., Attorneys for Appellant.

[fol. 219] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION—Filed March 6, 1946

Whereas, the opinion in the above entitled cause was handed down under the style of "The People ex rel. Paul F. Jones, Director of Insurance, Appellee, vs. Chicago Lloyds, et al, Appellee, Charles B. Morris, Appellant;

Whereas, the appeal was likewise entitled as set out in the opinion of the Supreme Court of Illinois;

Whereas, N. P. Parkinson has been the Director of Insurance from April 24, 1945 and was the Acting Director of Insurance of the State of Illinois at the time of the entry of the decree of the Superior Court of Cook County, Illinois, from which the appeal to the Supreme Court of Illinois was taken herein and was so designated in said decree, the said Paul F. Jones having resigned prior to the entry of said decree, but no change was made in the title of said

cause in the Superior Court of Cook County, Illinois, and said N. P. Parkinson is now such Director of Insurance;

Whereas, said N. P. Parkinson filed his appearance in the appeal in the Supreme Court of Illinois by his attorneys and filed therein an additional abstract of record and his briefs as such appellee and Acting Director of Insurance, and subsequent to April 24, 1945 and after the original [fol. 220] opinion of the Supreme Court of Illinois in the appeal was rendered, filed his petition for rehearing as Director of Insurance of the State of Illinois; and

Whereas, the citation issued by the United States Supreme Court in granting the appeal in the above styled case from the Supreme Court of Illinois to the Supreme Court of the United States was issued to Paul F. Jones, Director of Insurance of the State of Illinois, instead of to N. P. Parkinson, as his successor,

It is hereby stipulated by and between the parties, through their respective counsel that the said citation may be considered as if issued to N. P. Parkinson, Director of Insurance of the State of Illinois.

It is further stipulated that in making up the record, the Clerk of the Supreme Court of Illinois substitute the name of N. P. Parkinson as Director of Insurance in place and stead of Paul F. Jones, Director of Insurance of the State of Illinois, and that the case be henceforth styled "The People ex rel. N. P. Parkinson, Director of Insurance of the State of Illinois," etc.

It is further stipulated that this stipulation be attached to the citation heretofore issued by the United States Supreme Court, and may be included in the transcript of the record to be filed in the Supreme Court of Illinois.

J. L. London, Ford W. Thompson, Julius A. Polikoff, Attorneys for Appellant. Ferre C. Watkins, Glenn, Real & Browning, Attorneys for N. P. Parkinson, Director of Insurance of the State of Illinois, Appellee.

[fol. 221] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 222] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF RECORD FOR PRINTING—Filed March 18, 1946

Pursuant to Rule 13, Paragraph 9, of the Revised Rules of this Court, appellant states that he intends to rely upon all the points in his Assignments of Error.

Appellant deems the entire record as filed in the above entitled cause necessary for consideration of the points relied upon, including the Petition for Rehearing, but only the following pages thereof, Pages 1, 2 and the first paragraph of page 3; on page 8 the first paragraph under "Third Class"; on page 14 the first paragraph under "Fourth Class"; the bottom of page 29 under point II, and pages 30, 31, 32 and 33. The remaining pages are deemed unnecessary.

J. L. London, 418 Olive Street, St. Louis, Mo.; Ford W. Thompson, 818 Olive Street, St. Louis, Mo.; Julius Polikoff, 111 West Washington, Chicago, Ill., Attorneys for Appellant. Tannenbaum & Polikoff, of Counsel.

Copy of the above received this 14th day of March, 1946. Ferre C. Watkins, Otis F. Genn, Raymond G. Real & Otto W. Barnes, Attorney for Appellee.

[fol. 223] [File endorsement omitted]

[fol. 224] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF QUESTION OF JURISDICTION—April 29, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction in this case is postponed until the hearing on the merits.

Mr. Justice Jackson took no part in the consideration or decision of this question.

[Endorsed on cover:] File No. 50,664. Illinois Supreme Court, Term No. 62. Charles B. Morris, Appellant, vs. Paul F. Jones, Director of Insurance of the State of Illinois. Filed March 16, 1946. Term No. 62 O. T. 1946.

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 16 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. [redacted] 62

CHARLES B. MORRIS,

Appellant,

vs.

PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

STATEMENT AS TO JURISDICTION

J. L. LONDON,
FORD W. THOMPSON,
JULIUS POLIKOFF,
Counsel for Appellant.

TANNENBAUM, POLIKOFF & SCHMIDT,
Of Counsel.

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Statutes Cited

Civil Practice Act of Illinois	
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 961

PEOPLE EX REL. PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS,
(Petitioner) Appellee,

vs.

CHICAGO LLOYDS,
(Respondent) Appellee;

CHARLES B. MORRIS,
(Claimant) Appellant

JURISDICTIONAL STATEMENT

The following jurisdictional statement is herewith submitted, in accordance with Rule 12 of the Rules of the Supreme Court of the United States, in connection with the appeal taken in the above entitled cause, disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

The statutory provision and cases believed to sustain the jurisdiction of the Supreme Court of the United States is Section 344 (U. S. C. A.) Title 28 (Judicial Code, Sec. 237, Amended), providing:

"A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could

be had • • • where there is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the constitution, treaties, or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

Meyer v. *Fleming, et al., Trustees,* No. 392, October Term, 1945, decided 2-4-46;
Charleston, etc., Ass'n v. *Alderson,* Vol. 89, p. 621, Law Advance Opinions)Feb. 26, 1945);
Memphis, etc., Gas Co. v. *Beeler,* 315 U. S. 649;
John P. King Mfg. Co. v. *City Council of Augusta,* 277 U. S. 267;
Standard Scale Co. v. *Farrell,* 249 U. S. 571;
Williams v. *Bruffy,* 96 U. S. 716;
Zucht v. *King,* 260 U. S. 174;
Reinman v. *City of Little Rock,* 237 U. S. 171;
Atlantic Coast Line, etc. v. *City of Goldsboro,* 232 U. S. 548;
Bacon v. *Texas,* 163 U. S. 207.

By an act of Congress of January 31, 1928, C. 14, Par. 1, 45 Statutes at Large, p. 54, the word "appeal" was substituted for "writ of error."

In this said cause there is drawn in question the validity of Sections 187 (par. 799); 188 (par. 800); 189 (par. 801); 190 (par. 802); 191 (par. 803); 193 (par. 805); 194 (par. 806); 196 (par. 808); 208 (par. 820) of Chapter 73 Revised Statutes of Illinois, 1937, referred to in this record as the Insurance Code, the decision of the Supreme Court of Illinois (which is the Court of last resort in the State of Illinois) being in favor of their validity, and appellant having contended before said Court and before the lower court, the Superior Court of Cook County, Illinois, and at all stages of said proceedings in the Courts of Illinois, when the question arose, as disclosed by this record, and still contending in this Court that by the interpretation, con-

struction, application and effect given to said sections of the statutes of Illinois and by the decision of said Supreme Court of the State of Illinois, said statutory laws of the State of Illinois are repugnant to his constitutional rights as a citizen of the State of Missouri and of the United States, as guaranteed to him by the Constitution of the United States,

(1st) because the decision of the Supreme Court of the State of Illinois constitutes an act of the State Officers and Judges of the Courts of the State of Illinois in interpreting, construing, applying and enforcing said sections of the laws of the State of Illinois; and so interprets and gives effect to said laws as to abridge the privileges and immunities of the appellant, a citizen and resident of the State of Missouri and of the United States; and to deprive the appellant of his property without due process of law, and to deny to appellant the equal protection of the law as provided in the Fourteenth Amendment to the Constitution of the United States; and

(2nd) said decision of the Supreme Court of Illinois by its interpretation, construction, application and enforcement of said sections of the statutes of the State of Illinois, denies to appellant all benefit of Article IV, Section 1 of the Constitution of the United States, requiring that full faith and credit shall be given in each State to the public acts, records and judicial decisions, proceedings of every other state, and to the general laws enacted by Congress prescribing the manner in which such acts, records and proceedings shall be proven; and the effect thereof being that the decision of the Supreme Court of Illinois, by such an interpretation, construction, application and enforcement of said sections of the statutes of Illinois, denies to appellant, the holder of of a valid, final and unsatisfied judgment in his favor against respondent Chicago Lloyds, based upon a tort action that had accrued to him in October, 1932, and upon which he

had instituted and filed a suit for damages on August 24, 1934, against respondent Chicago Lloyds in the Circuit Court of the City of St. Louis, Missouri; and which suit was at issue and pending for trial on February 9th, 1938, when said liquidation proceeding was instituted in the Superior Court of Illinois; and in which suit said Missouri Court rendered judgment April 7, 1941—which Missouri Court when said suit was instituted August 24, 1934, and when it rendered judgment April 7, 1941, had jurisdiction of the subject matter of said cause and personal service upon respondent Chicago Lloyds, and which judgment was a general, final judgment upon which said Court of Missouri had duly ordered an execution to issue, and which execution was enforceable by general levy upon all of the property and assets of respondent Chicago Lloyds in the State of Missouri; and which judgment although duly authenticated, in accordance with and under the laws of the United States, appellant offered in evidence in support of his claim to participate pro rata in the assets of respondent Chicago Lloyds in the Court of Illinois where the assets of said respondent were being administered by a Statutory Liquidator in a statutory proceeding then pending and being prosecuted under said sections of the said Illinois laws; said lower Court, Superior Court of Cook County, Illinois, having refused to give said judgment any credit whatsoever, and having declined to receive said judgment in evidence in support of appellant's claim, and basing its said refusal upon an unconstitutional interpretation, construction, application and enforcement of said sections of the laws of Illinois; and dismissing appellant's claim as evidenced by said Missouri judgment, and said Supreme Court of Illinois on appeal affirmed the action of the said lower Court and the effect given said laws of the State of Illinois by said lower Court, and thereby denied to appellant the rights secured to him by said Article IV of the Constitution

of the United States and also Article VI, Section 1 of the Constitution, providing that the Constitution and laws of the United States which shall be made in pursuance thereof • • • shall be the supreme law of the land. The Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding; and also the Fourteenth Amendment to the Constitution of the United States, sections 1 and 2.

That in and by its said interpretation, construction and enforcement of said Section 191, which gives title to a Statutory Liquidator to the assets of an insurance company, said decision in effect interprets said Section 191 to grant exclusive jurisdiction to the Superior Court of Cook County to hear and determine all claims of creditors against the assets in the hands of said liquidator, and that said law requires all creditors to dismiss and abate all actions pending in the courts of sister States, and to present their claims to said Liquidator and there have been adjudicated on their merits; (note) Such an interpretation would have made available as a defense the two years Statute of Limitations of both Missouri and Illinois against all claims for false arrest and malicious prosecution which accrued in October of 1932); and further by the said interpretation and application said Supreme Court decided that the effect of vesting title in said Liquidator to the assets of respondent in this case was to abate said action pending in the Circuit Court of the City of St. Louis, State of Missouri, at the date of such vesting.

Further, in interpreting, construing and applying said Section 191 (Par. 203) said Supreme Court held that the effect thereof is to deprive the Courts of any sister State of the right, subsequent to February 9, 1938, to enter any judgment in a suit then pending, and for that reason refused to give such judgment full faith and credit under Article IV of the Constitution of the United States.

Further, said lower Court, Superior Court of Cook County, and said Supreme Court of the State of Illinois, in and by its decision and, notwithstanding both courts found that Chicago Lloyds was an unincorporated, voluntary association of individuals, nevertheless, in interpreting, construing, applying and enforcing said Section 196 of the Illinois Laws, treated said unincorporated association as if it were in fact a corporation organized and existing by virtue of the laws of Illinois; and also under the provisions of said Section 196 as if actually dissolved, notwithstanding the fact that said Section 196 expressly provides: "If the company against whom the petition for liquidation is filed be a corporation and the petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company, after service of an order to show cause, as aforesaid, and a full hearing, to enter a decree dissolving such company," and this record conclusively discloses that not only is "Chicago Lloyds" not an incorporated company, but that no such order was ever requested or entered as so required; and, in interpreting, construing and applying said Section 196, the Court expressly gave effect to a principle of law, that where a Court of the State creating a corporation, in a proper proceeding brought for the purpose of dissolving such company, and where a decree of dissolution has been entered dissolving such company, that a judgment taken against said corporation subsequent to the entry of such a dissolution order, without revival of the cause of action against the Receiver appointed by the Court in such dissolution proceeding, is null and void, and as if taken against a dead man. In applying said law, the Court has given effect to all of the legal consequences of such an order of dissolution, and also, notwithstanding the fact that the appellant's claim is based

upon a tort, and not upon any contractual relationship whatsoever to such corporation.

The said decision of such Court of Illinois, at page 32 thereof, uses the following language, showing clearly the above interpretation:

> "But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no reason why the statute vesting a liquidator with title, should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. • • •
>
> "In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the Superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois Statute for the liquidation of insolvent insurance companies. • • •
>
> "If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds."

The statutes, the validity of which is involved, are as follows (Chap. 73, Art. XIII, Ill. R. S. 1937):

> "Section 187 (Par. 799) '*Scope of Article.*' This article shall apply to every company which is doing

or attempting to do, or which is representing that it is doing an insurance business in this State * * *."

"Section 188 (Par. 800) *Grounds for Rehabilitation and Liquidation of Domestic Company.* Whenever any domestic company

(a) is insolvent; or

(b) has refused to submit its books, * * * to the Director of Insurance * * *;

(c) has neglected or refused to observe an order of the Director to make good within the time prescribed by law any deficiency, whenever its capital, if a stock company, or its required surplus, if a company other than stock, shall have become impaired;"

Then follows subsection (d) relating to illegal transfer of its property;

(e) is found to be in such condition that its further transaction of business would be hazardous to its policyholders, or to its creditors, or to the public; or

(f) has violated its charter or any law of this State or its corporate powers; or

(g) that an officer has refused to be examined under oath touching its affairs;

(h) cannot meet the requirements for organization as required by law;

(i) has ceased to transact insurance business for one year;

(j) has commenced or attempted a voluntary liquidation or dissolution;

(k) is a party plaintiff or defendant in any proceeding for the appointment of a Receiver, custodian, liquidator or rehabilitator for such company;

(l) consents by a majority of its directors, stockholders or members; or

(m) has not organized and obtained a certificate authorizing it to commence the transaction of its business within the period of time prescribed by the sections of this Code, under which it is or proposes to be organized; or

(n) has refused or neglected to pay any valid final judgment in thirty days,

"Then the Director shall report any such case to the Attorney General of this State whose duty it shall be to apply forthwith * * * for an order to rehabilitate or liquidate—and for an order to show cause why an order to rehabilitate or liquidate should not be entered as provided by this article."

"Section 189 (Par. 801) *Injunction.* The court shall have jurisdiction, at any time after the filing of the petition to issue an injunction restraining such company and its officers, agents, directors, employees and all other persons from transacting any company business * * *. The Court may issue such other injunctions or enter such other orders as may be deemed necessary to prevent interference with the proceedings, or with the Director's possession and control or title, rights or interests as herein provided or to prevent interference with the conduct of the business by the Director, and may issue such other injunctions or enter such other orders as may be deemed necessary to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens or the making of any levy against such company or its property and assets while in the possession and control of the Director."

"Section 190 (Par. 802) *Order of Rehabilitation or Liquidation.* On the return of such order to show cause and after a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists for rehabilitation or liquidation and directing the Director to take possession of the property, business and affairs of such company and to rehabilitate or liquidate the same as the case may be. * * *"

"Section 191 (Par. 803) *Title to Property of Company.* The Director and his successor and successors in office shall be vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. The filing or recording of such

order in the office of the Recorder of Deeds or the Registrar of Titles in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted."

"Section 193 (Par. 805) *Duties of Director as Liquidator—Sales—Notice to Creditors—Reinsurance.*" This section contains four subdivisions, the first providing "that upon the entry of an order directing liquidation the Director shall immediately proceed to liquidate the property, business and affairs of the company."; the second providing that "He may, subject to the approval of the Court, sell or otherwise dispose of the real and personal property * * *"; the third providing that "He shall as soon as may be conveniently possible, give notice to all creditors who may have claims against the company, as revealed by the records of the company, to present the same."; the fourth providing for reinsurance of policy risks.

"Section 194 (Par. 806) *Rights and Liabilities of Creditors Fixed upon Liquidation.* The rights and liabilities of the company and of its creditors, except those holding contingent claims, and of its policyholders, stockholders or members and of all other persons interested in its assets shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. The rights of claimants holding contingent claims on said date shall be determined as hereinafter provided."

"Section 196 (Par. 808) *Order of Dissolution.* If the company against whom the petition for liquidation is filed be a corporation and the petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company, after service of an order to show cause as aforesaid and a full hearing, to enter a decree dissolving such company. The Court may likewise, regardless of whether an order of liquidation is sought or has been obtained, upon

proper petition by the Director, order dissolution of a company where it has failed to qualify for a certificate of authority authorizing it to commence the transaction of its business, or where a company has no assets and no means for payment of liabilities."

"Section 208 (Par. 820). *Time to File Claims Against Insolvent Company.* (1) If upon the entry of an order directing the liquidation of a domestic company, or at any time thereafter during such liquidation proceeding, such company shall not be solvent, the Court shall after such notice and hearing, as it deems proper, make an order declaring such company to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the Director shall notify all persons who may have claims against such company, as revealed by the records of the company, and who have not filed proper proofs thereof, to present the same to him at a place specified in such notice within such time as may be fixed by order of the court. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court. The Director shall also cause a notice specifying the last day for the filing of claims to be published once each week for three successive weeks in a newspaper published in the county where such proceedings are pending, and in such other newspapers as he may deem advisable.

"(2) Proofs of claim on good cause shown may be filed subsequent to the date specified, but, no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full."

Statement of the Facts

As shown by the record (R. 47), appellant filed his original claim for $100,000 September 21, 1938, in response to a notice from the Liquidator to file a verified

claim on or before November 15, 1938, wherein he stated that it was based upon a pending tort action against Chicago Lloyds in the Circuit Court of the City of St. Louis, Missouri, attaching to same a copy of the petition of appellant filed in said suit, and stating that when said case was tried and judgment entered that he would file a supplemental and amended claim (R. 14, 58). Thereafter, on August 2, 1941 (R. 23), appellant filed with said Liquidator said amended and supplemental claim for $50,000, based upon the Missouri judgment obtained on said petition, and attached thereto a duly authenticated copy of the said judgment and of the judgment roll in said cause.

Thereafter on June 10, 1942, the Liquidator, without notice and without any hearing whatsoever before him on said claim so reduced to judgment, filed in the said Superior Court of Cook County his report on claims, and recommended disallowance of appellant's claim and mailed a copy of his report to appellant, wherein he gave as a reason for his recommendation of disallowance that the judgment was obtained subsequent to the order of liquidation and in violation of an injunctive order entered in the case on February 9, 1938, and subsequent to the date set by the order of Court for filing of claims in the proceeding (R. 10).

Thereupon appellant filed his exceptions to said recommendation and report (R. 10-16), setting out that there had been no hearing upon the claim before the Liquidator; that said recommendation of disallowance was entirely "ex parte"; that said claimant's amended claim was properly filed; that the Liquidator had given an improper and unlawful extra-territorial effect to said injunctive order made by the Court; and had failed to find or state, or make known to the Court in his recommendations, that the claimant is and was a non-resident of Illinois and a citizen of St. Louis, Missouri, and had instituted a suit against Chicago Lloyds in the year 1934, long prior to the entry

of the decree directing liquidation; and that the said suit was pending and was being defended by Chicago Lloyds in the Circuit Court of St. Louis, Missouri, after service of process, and was also so pending at the time of the entry of the order directing liquidation, February 9, 1938; and that the Liquidator had failed to give the judgment of the Circuit Court of the City of St. Louis, State of Missouri, that full faith and credit to which it is entitled by reason of the provisions of Article IV, Section 1 of the Constitution of the United States, and further, that appellant had been denied as a citizen of the State of Missouri of the privileges and immunities of citizens of the State of Illinois, as guaranteed by Article IV, Section 2 of the Constitution of the United States; and that the Illinois Court had no right to enforce any law of the State of Illinois which abridged the privileges of claimant as a citizen of Missouri and of the United States, or to deny to him as such citizen of Missouri the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution by Section 1 thereof; and further that he was entitled to the benefits and protection of Article VI of the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions of the Constitution of the United States and the laws of the United States made under and pursuant thereof (R. 16).

Thereafter the Superior Court of Cook County appointed a Master to hear and consider said objections and exceptions and ordered him to file his recommendation and report to the Court (R. 17).

Appellant appeared before said Master and offered before said Master the said authenticated judgment and judgment roll of the Circuit Court of the City of St. Louis in favor of the claimant and against Chicago Lloyds for the sum of $50,000.00.

There was no evidence offered by the Liquidator tending to show that the appellant was a party to said liquidation proceedings wherein the decree of January 9, 1938 was entered; or that he was ever served with notice of said injunctive order, or that he had ever been cited and found guilty of contempt of said order. The only evidence offered by the Liquidator was the notice to appellant to file his claim with the Liquidator within the time fixed by the Court (R. 33, 57 and p. 16 of Additional Abstract) and the original claim filed by claimant in response to said notice and the amended claim filed on August 2, 1941 (R. 23), and two letters (R. 53, 59), one directed by the Judge of the Circuit Court of the City of St. Louis to the Liquidator, and the other an answer thereto by the Attorney for said Liquidator, both written before said final judgment for $50,000 was entered by said Circuit Court of the City of St. Louis, Missouri.

The Master found that, on February 9, 1938, the petition praying for an order that sufficient cause exists for liquidation of Chicago Lloyds, an unincorporated association of individuals transacting an insurance business in the State of Illinois and in other States, was filed (R. 18-20, 56); that it appears that a resolution was adopted by the Directors of Associated Underwriters, Inc., Attorney-in-Fact for Chicago Lloyds, consenting to the entry of such an order, and consenting to the liquidation of Chicago Lloyds by the Director of Insurance. A decree was entered on February 9, 1938, directing the Director of Insurance to take possession of the property of "Chicago Lloyds", and to liquidate the same in accordance with the terms of the Illinois Insurance Code (R. 20); that this decree contained an injunctive order, a portion of which the Master incorporated into his report (R. 21), which order among other things "restrained all persons from in any manner interfering with the possession of said Director of Insur-

ance, in or to the books, records or property of Chicago Lloyds, or with the liquidation of its business, until the further order of the Court; or from obtaining or attempting to obtain preferences, judgments, attachments or other like liens; and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in possession and control of the Liquidator."

The record discloses that at no time has appellant ever asked for any preference, lien or any position of advantage other than the right to share pro rata with the other general creditors, without any preference or priority whatsoever.

There is no finding by the Master that appellant was ever served with a copy of the injunction, or had any notice thereof. It was stipulated that the appellant received notice from the Liquidator to file a verified claim with the Liquidator (R. 33). (This notice is set out page 16 Additional Abstract; it contains no reference to any injunctive order.) In response to that notice, he filed his original and amended claim. There was no stipulation that appellant had notice of the injunction order, or any evidence whatever from which such notice could be deduced. Counsel for the Liquidator specifically reserved the right to produce evidence on that (R. 34), (Addn. Abs. p. 5), but produced none.

The facts as summarized by the Master from the evidence submitted, both oral and documentary, are set out in Record pages 18 to 24. On pages 24, 25 and 26 are set out the conclusions of law. Beginning on page 26 are set out his recommendations and a transcript of the proceedings and the evidence taken before the Master.

The Master in his "conclusions of law" (R. 24), finds that there is no dispute on any material fact in the matter involved in this reference and the only question

involved is a question of law, stated thus: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the Court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment."

The Master recommended (R. 26) that "the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objection to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding.

Objections (which by order of said Superior Court were to be treated as exceptions (R. 17)) were filed by appellant to the Master's Report (R. 34-40), wherein appellant excepted and objected to the said report for the reason that he had failed to give full faith and credit to said Missouri judgment duly and properly authenticated in support of plaintiff's claim, in violation of Section 1 of Article IV of the Constitution of the United States and the Acts of Congress passed in pursuance thereof, providing for full faith and credit to said Missouri judgment, and that to refuse to accord full faith and credit to said judgment is to deny appellant his rights under Section 2 of Article IV of the United States Constitution, and is a violation of Section 1 of Amendment XIV to the United States Constitution (R. 38).

The case was thereupon argued before the Superior Court of Cook County upon said exceptions (R. 24-40). The final order or decree confirming the Master's Report, with respect to the claim of Charles B. Morris, was entered September 28, 1944 (R. 61). The Court found (R. 61) "that the findings of the said Master in Chancery are

proper, true and correct, and that the objections to the Master's report filed by the claimant * * * (which were ordered to stand as exceptions before the Court), were properly overruled by the Master" (R. 61). "That the judgment in favor of Charles B. Morris in Case No. 206424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator, and should not be considered in this liquidation proceedings." "The Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206424 and the other evidence introduced by claimant as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds."

The Court "Orders, adjudges and decrees: 1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed. * * * 3. That said claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommenration that said claim be disallowed are overruled, and said report on claims and the recommendations of disallowance of said claim is approved and confirmed, and said claim disallowed in accordance with the recommendations contained in the Master's report" (R. 61).

Thereafter the appellant duly prosecuted his appeal to the Supreme Court of Illinois, which was the Court that had jurisdiction (R. 64). Appellant filed his brief in said Supreme Court and therein (pp. 9-11) set out the several errors that he assigned for reversal, as required by the Civil Practice Act of Illinois and Rule 39 of said Supreme Court; and therein specifically contended that the interpretation, construction, application and effect given to the

injunctive statute, Section 189 of the laws of the State of Illinois, 1937, Chapter 73, referred to as the Illinois Insurance Code, and upon which said Superior Court had given extra-territorial effect to the said injunctive order entered February 9, 1938, is unconstitutional because there is and was no finding by the Master and no evidence whatever in the record, that appellant had been a party to said liquidation proceedings; or had been served with said injunctive order; or had any notice whatever thereof; or that the continued prosecution of said tort action in the Missouri Court would constitute a violation of said injunctive order; and that therefore to so apply said law as a ground and reason and as a penalty by refusing to give full faith and credit to said judgment, was arbitrary, erroneous and a complete denial and disregard of appellant's constitutional rights secured to him as a citizen of the State of Missouri and of the United States by Article IV, Sections 1 and 2; also Article VI; and the Fourteenth Amendment to the Constitution, thus depriving him of his property without due process of law and abridging his privileges and immunities and denying to him the equal protection of the law.

In answer to said original brief filed by appellant in said Supreme Court, the appellee filed a brief wherein for the first time, in addition to Section 189, the appellee contended that said Section 189 in connection with Sections 191, 193, and 196, when legally interpreted, construed, applied and given effect, justified the Supreme Court in affirming the judgment on the additional ground that notwithstanding respondent Chicago Lloyds was in fact a mere voluntary unincorporated association of individuals, transacting an insurance business in many other states of the Union including the State of Missouri, besides the State of Illinois, and, notwithstanding it was not in fact a corporation having a charter from the State of Illinois and created and existing by virtue of the laws of Illinois,

and also notwithstanding no petition had been filed or any order made in said statutory liquidating proceeding pronouncing Chicago Lloyds legally dissolved in conformity with Section 196, that nevertheless the legal effect of Chicago Lloyds being ordered liquidated under said Section 189, and the vesting of title to their assets and property in such statutory liquidator, was to abate any and all actions pending against said Chicago Lloyds in sister States and to completely dissolve said unincorporated association of individuals as an entity (pp. 6-11 of said brief are copied in this record certified to this Court); and further contending that the judgment rendered against said association Chicago Lloyds in said sister States subsequent to February 9, 1938, was therefore void and not entitled to the benefit of the full faith and credit clause of the Constitution of the United States, and that such an effect given to said Sections 189, 191, 193 and 196 would not constitute a violation of any of appellant's constitutional rights.

Thereafter appellant filed in said Supreme Court his reply brief, and on pages 25, 26 and 28, and in his summary on page 41 of said brief, met said new contentions and subsequently orally presented his said contentions without avail.

The errors summarized on page 14 hereof, are specifically set out on pages 9-11 of Appellant's original brief, as follows:

> "1. In finding or holding that the findings of the master are proper, true and correct and that the claimant's objections to the master's report were properly overruled; in overruling the claimant's exceptions to said report; and in approving said report.
>
> "2. In overruling the claimant's objections to the report of the liquidator on the claim based upon the Missouri judgment and to the recommendation of the liquidator that said claim be disallowed; in approving the liquidator's tenth report on claims in so far as it

recommended the disallowance of the claim on said Missouri judgment; and in disallowing said claim.

"3. In finding that the Missouri judgment in favor of claimant and against Chicago Lloyds, et al., has no force or binding effect upon the liquidator and should not be considered in the liquidation proceeding as evidence of the liability to claimant or of the amount of his claim; and in failing to hold that the liquidator was estopped by said judgment, and that it was res judicata and binding and conclusive evidence of the claim of appellant.

"4. In failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States, the Act of Congress enacted May 26, 1790, and the decisions of the Supreme Court of the United States; and in failing to give full faith and credit to said judgment.

"5. In holding that the decree entered February 9, 1938, restrained claimant from prosecuting to judgment the action pending in Missouri.

"6. In failing to hold that the decree entered February 9, 1938, did not restrain claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have power or authority to restrain the claimant from prosecuting that action inasmuch as the judgment rendered therein would not be a lien upon the property in the possession of the liquidator.

"7. In failing to hold that the decree entered February 9, 1938, did not restrain the claimant from prosecuting the action then pending in Missouri to judgment, for the reason that the Court did not have jurisdiction over the claimant.

"8. In failing to hold that Section 189 of the Illinois Insurance Code (which the court below construed as warranting the entry of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no

jurisdiction, restraining him from prosecuting an action pending in a sister State, and as warranting on the strength of that injunction, the refusal to allow a claim, based on a judgment obtained in the sister State, to share in the property of Chicago Lloyds in the possession of the liquidator) is unconstitutional for the reasons (1) that, so construed, it is inconsistent with Section 1 of Amendment XIV of the Federal Constitution because it deprives the claimant of his property,—the right to prosecute the suit theretofore commenced in a sister State and the right to have his claim on a judgment rendered in his favor in that State allowed as a claim against Chicago Lloyds and entitled to share with other creditors in the assets of Chicago Lloyds—without due process of law; (2) that, so construed, it abridges the privileges and immunities of citizens of the United States, guaranteed by Section 2 of Article IV of the Federal Constitution, by denying to claimant the right to bring suit on the Missouri judgment to which Illinois, by Section 1 of Article IV, is required to give full faith and credit; (3) that so construed, it invades the privileges and immunities of claimant guaranteed by Section 1 of Amendment XIV to the Federal Constitution; and (4) that, so construed, it denies to claimant the equal protection of the laws guaranteed by that section.

"9. In failing to hold that the court could not give extra-territorial effect to the injunction entered February 9, 1938, by refusing to give full faith and credit to the judgment of Missouri."

The contentions of appellee, summarized on page 15 hereof, are specifically set out on pages 6 to 11 of Appellee's Brief as follows:

"A. Under Paragraph 803 of Chapter 73, the Liquidator is vested with title to all property, contracts and rights of action of the company as of the date of the liquidation order.

"B. Paragraph 806, Chapter 73, provides that the rights of all creditors shall be fixed as of the date of the order of liquidation unless otherwise ordered, and that order provided such rights were fixed as of noon on February 15, 1938 (Abs. 5).

"C. Paragraph 801, Chapter 73, provides for the issuance of an injunction (to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens,' and such an injunction was issued (Abst. 6).

"When a state has adopted a policy governing the liquidation of insurance companies, that policy is binding upon creditors wherever they may be located. A judgment taken against the insolvent subsequent to the date of the entry of the liquidation order is not entitled to recognition in the liquidation proceeding. (Citing cases.)

"All parties, whether policyholders or creditors, dealing with an Illinois insurance company have presumptive knowledge of its charter provisions and the statutory law governing its liquidation. (Citing cases.)

"The laws of Illinois governing the liquidation of insurance companies and judicial proceedings thereunder are entitled to full faith and credit in the courts of sister states. (Citing cases.)

"A corporation carries with it all charter provisions governing it into each state in which it carries on business, and all parties doing business with it are presumed to know the law governing it and are bound thereby. (Citing cases.)

"B. The general rule in a statutory liquidation proceedings where a statutory liquidator is vested with title is that judgments taken against the insolvent company, subsequent to the entry of the liquidation order, are not provable in the liquidation proceedings. (Citing cases.)

"Judgments taken against an insolvent insurance company, subsequent to the order of dissolution, are subject to collateral attack in the liquidation proceedings." (Citing cases.)

Pages 25, 26 and 28, and the summary on page 41 of appellant's reply brief, referred to on page 16 hereof, are as follows:

"He relies principally upon Section 191 of the Code (Ill. Rev. Stat., Chap. 73, Sec. 803), which provides that title to the property of a company in liquidation is vested in the Director (Brief, p. 28). Cases involving corporations are cited for the proposition that the title vested in the Director is recognized in other jurisdictions. The reasoning upon which the decisions in those cases rests is that a State, which has created a corporation, may say who the agents of that corporation are to be in case its charter is forfeited. (See quotation from Relfe v. Rundle, on pages 32 and 33 of the brief of appellee.) That reasoning is not applicable to associations which are not created by a State. Chicago Lloyds received no charter from the State of Illinois. (Roach & Co. v. Harding, 348 Ill. 454, 464; 7 C. J. S. "Associations" 19, 21.) It was formed by act of its members, many of whom are residents of States other than Illinois. (Claimants' Exs. Nos. 15 and 16.) It transacted business in Illinois. It also transacted business in Missouri, and it may have done so in other States. If an association owns property located in more than one State, which of the States has the power of designating the 'agent' (if he can be called an agent of the association) to liquidate all its property wherever located? A corporation, which is created by the laws of one of the States, carries its charter and the laws of the State of its creation governing it into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. Chicago Lloyds has no charter into which Section 191 of the Code can be read. Consequently, the theory whereunder a statutory liquidator of a corporation succeeds to the title to its property located in another State does not apply to an association." (Reply Brief pp. 25, 26.)

"At this point in his argument the Director has injected a new contention, not against the provability of the judgment, but against its validity. He argues that the judgment is invalid because the laws of Illinois are entitled to full faith and credit in Missouri and that under the full faith and credit clause the Missouri court 'should have refused to enter judgment against Chicago Lloyds' (Brief, p. 35). He forgets that, but a few pages before, he argued that a State is not required to give faith and credit to the statutes of sister States (Brief, pp. 19-26). Surely, the courts of one State are not to be ousted of their jurisdiction by legislation of another." • • • (Reply Br. p. 28).

"A. Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate its property and a judgment rendered after the entry of such an order is not void.

"B. Chicago Lloyds continued to remain capable of being sued after its certificate of authority to transact business in Illinois expired, even assuming that that certificate was not renewed.

"C. Illinois is required to give full faith and credit to the Missouri judgment.

"The fact that the liquidation proceeding here is statutory does not confer exclusive jurisdiction to liquidate claims upon the supervising court or warrant that court in disallowing claims on judgments rendered by competent courts of sister States after the entry of the order of liquidation, where the company is an association which has not been dissolved.

"A. Assuming that the Director of Insurance of the State of Illinois became vested with title to all property of Chicago Lloyds, it does not follow, as an incident of that title, that claims against it may not be liquidated in competent courts of sister States.

"B. Assuming that the claimant is presumed to know that any claim he might have against Chicago Lloyds

would be 'dealt with' in accordance with the provisions of the statutes of Illinois, it does not follow that claims against Chicago Lloyds may not be liquidated in competent courts of sister States" (Reply Br. pp. 41, 42).

The Supreme Court affirmed the judgment of the lower Superior Court of Cook County, and in and by its opinion discloses clearly that it adopted said contentions of appellee; and by so interpreting, construing, applying and giving effect to said sections of said Illinois law, it wrote an opinion thus justifying the violation of appellant's constitutional rights (as we have heretofore quoted on page 6 of this jurisdictional statement), filing and entering said opinion September 19, 1945.

Thereafter and within the time provided by the Rules of said Supreme Court, appellant filed a petition for rehearing of said cause, wherein he specifically directed the attention of the Court to said erroneous interpretation, application and effect that it had given to said Illinois statutes and that by such effect all of appellant's constitutional rights had been disregarded and denied, which said petition for rehearing was overruled and denied on the 19th day of November, 1945. Thereafter said original opinion was modified in certain other respects by order of the Court and entered on November 26, 1945.

The questions involved herein are substantial because they involve substantial rights of the appellant herein set out and involve a principle that is far reaching and of great importance and interest all over the United States and will decide a question that is bound to arise again and again and is bound to come before the Supreme Court of the United States.

The Supreme Court of Illinois found that the Supreme Court of the United States has never passed on the question, and that the issues presented "a new application of the full-

faith-and-credit clause, which is still debatable, or at least questionable. * * * These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrator of such questions arising under the full-faith-and-credit clause."

Thus, it will be seen that numerous property rights and numerous constitutional questions are bound to arise out of similar situations under the full-faith-and-credit clause of the Federal Constitution and the due process clause of the Constitution, as hereinabove set out.

The decision of this Court will determine whether or not one State can so legislate as to deprive citizens of other States of personal as well as property rights, and whether such legislation can have extra-territorial effect, so that the issue involved is far reaching and of great national importance.

There is appended hereto the opinion of the Supreme Court of Illinois delivered upon the rendition of the judgment sought to be reviewed, together with the amendment made by the said Supreme Court on November 26th, 1945.

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APPENDIX

Opinion

SUPREME COURT OF ILLINOIS, UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss!

At a Term of the Supreme Court, begun and held in Springfield on Monday the 10th day of September in the year of our Lord, one thousand nine hundred and thirty-five, within and for the State of Illinois.

Present: Charles H. Thompson, Chief Justice; Justice Clyde E. Stone, Justice Walter T. Gunn, Justice June C. Smith, Justice Francis S. Wilson, Justice Loren E. Murphy, Justice William J. Fulton; George F. Barrett, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it Remembered, that afterwards, to-wit, on the 19th day of September, 1945, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 28664

PEOPLE ex Rel. PAUL F. JONES, Director, etc., et al.,
Appellees,

vs.

CHARLES B. MORRIS, *Appellant*

Appeal from Superior Court, Cook County

Earl Benjamin Searcy, Clerk of Supreme Court, State of Illinois

Docket No. 28664—Agenda 25—May, 1945.

The People ex rel. Paul F. Jones, Director of Insurance, Appellee, v. *Chicago Lloyds et al.—(Charles B. Morris, Appellant.)*

MR. JUSTICE GUNN delivered the opinion of the court:

The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the

Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as "liquidator," appointed by the decree of the superior court of Cook county upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.

As finally amended appellant's claim consists of a judgment rendered in the circuit court of the city of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the superior court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1), and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment.

Appellant's claim involves a construction of the constitution of the United States, and authorizes a direct appeal to this court. *Groome* v. *Freyn Engineering Co.* 374 Ill. 113; *VanDyke* v. *Illinois Commercial Men's Ass'n.* 358 Ill. 458.

Many of the questions arising under this provision of the United States constitution have been so thoroughly settled that as to such questions an appeal to this court would not be entertained, because the question involved is no longer debatable, and we do not entertain appears when the constitutional question is settled so as to be no longer debatable. *First Nat. Bank* v. *Village of South Pekin*, 371 Ill. 605; *Dean* v. *Board of Education*, 386 Ill. 156; *Wilson* v. *Prochnow*, 354 Ill. 98.

The question here presented, as set out in the report of the master, is as follows: "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment?" This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal

from the superior court of Cook County. (*Atkins* v. *Atkins*, 386 Ill. 345.) Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrator of such questions arising under the full-faith-and-credit clause.

The facts as applicable to the questions involved are comparatively simple. Chicago Lloyds, an unincorporated association recognized and authorized by the laws of Illinois to transact insurance business in Illinois, and in other States, upon compliance with the laws of such other States, obtained a license to transact business in the State of Missouri March 1, 1932, and continued to have such authority for some years thereafter. Associated Underwriters, Inc., was the attorney in fact for Chicago Lloyds in said State, and one Roessel was attorney for Chicago Lloyds, and its agent. The claimant, Charles B. Morris, became the agent handling such business in Missouri, under a contract. A dispute arose as to whether he had accounted for all premiums paid to him, which resulted in his being arrested upon the complaint of Roessel, charged with embezzlement, and was indicted, tried and acquitted.

August 24, 1934, Morris brought suit in the circuit court of the city of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., and attorney Roessel, for malicious prosecution and false arrest. The cause was removed to the United States court, and afterwards, January 7, 1938, remanded to the circuit court of the city of St. Louis. February 9, 1938, the People of the State of Illinois, upon the relation of the Director of Insurance, filed in the superior court of Cook county a petition praying for the entry of an order finding sufficient cause existed for the liquidation of Chicago Lloyds, and on the same day a decree was entered adjudging and decreeing that the Director of Insurance take possession of its property, and liquidate the same in accordance with the Illinois Insurance Code. February 15, 1938, an order fixing the time and procedure for

the filing of claims was made, requiring claims to be presented to the liquidator on or before November 15, 1938.

Before the liquidation proceeding Chicago Lloyds had questioned the jurisdiction of the circuit court of the city of St. Louis by a plea and demurrer which were overruled, and later filed an answer on the merits, as did also Associated Underwriters, Inc. After the order of the superior court of Cook county appointing a liquidator was entered, an injunction was issued restraining the claimant and others from prosecuting claims (of which claimant concedes he had notice), and counsel for Chicago Lloyds, upon the requirement of the liquidator, withdrew, and the St. Louis court was advised that the reason of such action was the liquidation proceedings in Illinois, with the consequent vesting of the title to all of the property and assets of Chicago Lloyds in the liquidator. Nevertheless, the claimant persisted in prosecuting his suit at law in the circuit court of the city of St. Louis, and April 7, 1941, such court entered a judgment in favor of the claimant against Chicago Lloyds and others in the amount of $50,000.

September 21, 1938, before obtaining judgment Morris filed his claim with the liquidator in the amount of $100,000, claiming damages for false imprisonment and malicious prosecution, and attached as an exhibit the complaint filed in the circuit court of the city of St. Louis. After he had obtained judgment he amended his claim by filing an exemplified copy of the judgment rendered by the circuit court of the city of St. Louis. The amended claims shows it arose from the same state of facts as the original. The only evidence presented by claimant was the record of this judgment, and no attempt made to establish and prove a contingent claim, as provided by section 309, subsection 3, of the Illinois Insurance Code, discussed later in the opinion.

In disposing of the issues presented and argued in this case it is first necessary to examine the status, rights and title of the liquidator of the insolvent insurance company under the laws of the State of Illinois. Article XIII of "An Act to revise the law relating to insurance," referred to as the Insurance Code, (Ill. Rev. Stat., 1943, chap. 73, pars. 799, et seq.,) among other things provides for the

liquidation of insolvent insurance companies. Section 188 of the Insurance Code, (Ill. Rev. Stat. 1943, chap. 73, par. 800,) specifies the grounds upon which the Director of Insurance and the Attorney General may petition a circuit or superior court for an order to show cause why an insurance company should not be liquidated. Section 189, (par. 801,) of the Insurance Code provides the court may issue an injunction to protect the assets of such insolvent company. Section 190 (par. 802) provides, upon full hearing, the court may enter an order either to dismiss the proceeding, or find cause exists, and order the Director of Insurance to take possession of the property, business, assets, and affairs of said insolvent insurance company, and liquidate them according to law. Section 191 (par. 803) provides that the Director, as liquidator, is vested by law with title to the property, contracts and right of such insolvent insurance company, as of the date of the order entered by the court. Section 193, (par. 805,) fixes the duties of the liquidator. Section 194, (par. 806,) provides that creditors, except those holding contingent claims, shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. Section 208, (par. 820,) directs the manner of fixing the time to file claims, after an order has been entered declaring the company insolvent. Section 209, subsection (3,) (par. 821) provides how and under what conditions a contingent claim may be allowed, with a limitation that the claim must become absolute against the company on or before the last day fixed for filing the proofs.

Under the provisions of a prior law, (Ill. Rev. Stat. 1935, chap. 73, par. 105(4),) which is almost identical with section 191, we have held that the title of a liquidator of an insolvent insurance company is different from that of a receiver in chancery, who is limited to the territorial jurisdiction of the court appointing him, but, on the contrary, vests in the liquidator the title to all of the property of an insolvent insurance company. *People ex rel. Palmer* v. *Nichaus*, 356 Ill. 104; *National Bondholders Corporation* v. *Joyce*, 258 N. Y. 257, 11 N. E. 2d 552.

The pioneer case making this distinction between the title of a liquidator appointed under a special statute,

and that of a receiver, is *Relf* vs. *Rundle*, 103 U. S. 222, 26 L. ed. 337, where the distinction between possession of a receiver and the title of a State officer, vested with title of assets of an insolvent corporation, was first discussed with like results. The title of such a liquidator reaches all of the assets of the company, including those in other States; (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749;) and the title of such a liquidator must be recognized by the courts of other states. *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.

At least twenty States, including Missouri, have enacted statutes vesting title to the property of an insolvent corporation in the liquidator appointed to take charge of its property, and the Supreme Court of Missouri has given, to a statute similar to section 191, (Mo. Rev. Stat. 1929, sec. 5947,) the construction we have given in the *Niehaus* case. (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S. W. 2d 1157). In this case the title of a liquidator appointed in Colorado was held superior to a later judgment in Missouri, levied on Missouri real estate.

The title of such a liquidator has been compared to that of a trustee under a general deed of assignment. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no reason why the statute vesting a liquidator with title should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. *Isaacs* v. *Hobbs Tie & Timber Co.* 282 U. S. 734 75 L. ed. 645.

In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that

the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois statute for the liquidation of insolvent insurance companies.

Appellant claims that notwithstanding the property and assets of Chicago Lloyds vested in the liquidator, the full-faith-and-credit clause of the United States constitution, and the statutes enacted pursuant thereto, require the judgment rendered three years later, in the circuit court of the city of St. Louis, against Chicago Lloyds be allowed for the full amount, as a valid claim against the assets in possession of such liquidator.

If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds.

The construction and interpretation of the full-faith-and-credit clause has been the subject of much controversy and difficulty, and in some cases reaching results which are apparently contradictory. No rule can be laid down which will fit all cases. In the simple instance of a judgment for debt against a person or corporation, where collection is sought in another State, with no complications involving insolvency, conflict of law, questions of jurisdiction, or offending State policies, little difficulty is had in applying the case of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, that a judgment have the same faith and credit in another State that it had in the State of its rendition. This case was decided in 1813, but since that time the United States Supreme Court has held there were exceptions to the rule first announced, because of the complex nature of the Federal union and the necessity of preserving the sovereignty and policies of the several States by refraining from imposing upon them the laws of another State under the guise of the full-faith-and-credit clause.

From the cases a general pattern may be discovered controlling the several different classes of cases in which

full faith is required, and those which are regarded as exceptions to the rule. Upon examination we find that the application of the full-faith-and-credit clause is particularly favored when applied to the enforcement of judgments of another state, as distinguished from statutes and other public acts. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) Doubtless because this provision is supposed to have been a part of the constitution to give effect to the general rule of res judicata. (*Magnolia Petroleum Corp.* v. *Hunt*, 320 U. S. 438, 88 L. ed. 149.) So when the same proposition of enforcing a judgment for money in one State is presented, and there is no question of exception to the rule arising, the rule of *Mills* v. *Duryee*, 7 Cranch, 481, 3 L. ed. 411, is easy to apply.

The first class of cases comprise those where full faith is required. In divorce matters the decree of another State is entitled to full faith and credit, where the jurisdiction of the trial court is not questioned. (*Williams* v. *North Carolina*, 317 U. S. 287, 87 L. ed. 279.) This is but an application of the well-settled rule that when full faith and credit is sought the jurisdiction of the court rendering the judgment is always open to inquiry. (*Pendleton* v. *Russell*, 144 U. S. 640, 36 L. ed. 574.) So also, a judgment for money rendered in one State is enforcible in another although in the latter it would be regarded as a gambling debt and unenforcible. (*Flauntleroy* v. *Lum*, 210 U. S. 230, 52 L. ed. 1039.) In *Milwaukee Co.* v. *M. E. White Co.*, 296 U. S. 268, 80 L. ed. 220, a judgment for taxes rendered in Wisconsin was enforced against the defendant in the State of Illinois. And in *Yarborough* v. *Yarborough*, 290 U. S. 202, 78 L. ed. 269, it is held that support money awarded a child by a decree of court in a divorce proceeding between the father and mother is not subject to being enlarged or increased in another State, where the decree is pleaded in bar, even though the child was not a party to the proceeding. And similarly, the full-faith-and-credit clause applies to an unalterable decree of alimony of a divorced wife. (*Sistare* v. *Sistare*, 218 U. S. 1, 54 L. Ed. 905.) It is to be observed in all of the cases just cited there was a judgment or decree for money against the defendant, which was held binding in

another State, whether urged for collection or defensive purposes.

A second class of cases, where full faith and credit have been denied, cover a wide field. It is a general rule that the courts of no country execute the penal laws of another; (*The Antelope*, 25 U. S. 10), and, hence, full faith and credit has been denied a judgment for a penalty obtained by a State against an insurance company (*State of Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 32 L. ed. 239), followed in *Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123, where the nature of the penalty is exhaustively treated. So, where the only remedy to collect an assessment against the stockholder of a corporation is at the suit of a *creditor*, denying full faith and credit to a judgment obtained by a receiver against a stockholder does not offend the constitution. *Finney* v. *Guy*, 189 U. S. 335, 47 L. ed. 839.

Also where the New York Code provided a foreign corporation could not maintain a suit unless the cause of action arose in the State, full faith and credit was not denied where the New York court refused to recognize an Illinois judgment in favor of a foreign corporation, where the action did not arise in the State of New York. (*Anglo-American Provision Co.* v. *Davis Production Co.*, 191 U. S. 373, 48 L. ed. 225.) The reason given is that the requirement that the action arise in New York goes to the jurisdiction of the New York court, and such jurisdiction is not afforded by the full-faith-and-credit clause. Likewise, a judgment against an insurance company on a policy, enforcible because the beneficiary has an insurable interest in the State where the contract is made, may not be enforcible in another State where the same interest of the beneficiary is held not to be an insurable one. *Griffin* v. *McCoach, Trustee*, 313 U. S. 498, 85 L. ed. 1481.

The nature of a case as constituting a cause of action in the several States is not changed by the fact that it is reduced to judgment. (*Huntington* v. *Attrill*, 146 U. S. 657, 36 L. ed. 1123.) However, it must be observed that a State may not, under the guise of denying a remedy, refuse, under the full-faith-and-credit clause, claims otherwise capable of being enforced in such other State. *Broderick* v. *Rosner*, 294 U. S. 629, 79 L. ed. 1100.

This second type of cases represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere. Two of these cases, the *Finney and Anglo-American cases* are to be distinguished from the first class above discussed only because jurisdiction is lacking to afford a remedy, and not because of a mere difference between the States as to what amounts to a cause of action.

A third class of cases arises when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property, from that of the State in which it is sought to be enforced. So, the construction of a will involving real estate (*Clarke* v. *Clarke*, 178 U. S. 186, 44 L. ed. 1028); a judgment determining legitimacy of children, (*Olmsted* v. *Olmsted*, 216 U. S. [illegible] ed. 530); or the manner of adoption of children (*Wood* v. *McGehee*, 237 U. S. 611, 59 L. ed. 1144); or the capacity of a lunatic (*Gasquet* v. *Fenner*, 247 U. S. 16, 62 L. ed. 956); and the interpretation of contracts (*Pink* v. *A. A. A. Highway Express, Inc.*, 314 U. S. 201, 86 L. ed. 152), are all instances in which the judgment of one State is unenforcible in another State under the full-faith-and-credit clause, if opposed to the law of the latter.

In recent years there has been a trend towards yet another class of cases involving full faith. Where a party has an option to proceed under the laws of one of two or more States having similar laws, as in compensation cases, where the liability may be enforced either where the contract of employment is made, or where the injury occurs; and cases involving the liquidation of corporations, where they acquire title to the property by the judgment and laws of one State but have property in another which is subject to preferences which may be created by the State law of the latter. In *Pacific Employers Ins. Co.* v. *Industrial Accident Com. of Calif.*, 306 U. S. 493, 83 L. ed. 940, it is said: "It has often been recognized by this Court that there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce

even the judgment of another state in contravention of its own statutes or policy. * * * The very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." Having this in mind the court held, in compensation cases, where each State had a compensation law, it would be lawful for a State to adopt or enforce the remedy of another, or follow its own. There an employee residing in Massachusetts, becoming employed in that State by a Massachusetts employer, and injured in the course of his employment in the State of California, was sustained in having compensation awarded under the California law.

In *Alaska Packers Ass'n.* v. *Industrial Accident Com. of California,* 294 U. S. 532, 79 L. ed. 1044, an employee made his contract in the State of California, and by agreement with his employer to be transferred there and back, went to Alaska, where he was injured. Upon return to California he brought proceedings for compensation under the California law, which was allowed and sustained notwithstanding claim that the Alaska compensation law should control. In *Magnolia Petroleum Co.* v. *Hunt,* 320 U. S. 430, 88 L. ed. 149, the plaintiff was a resident of Louisiana, and was employed in that State. In the course of his employment he went to the State of Texas, and was injured, and claimed and was allowed compensation under the Texas law. He then went back to Louisiana, the State where the contract was made, and filed another claim for compensation under the Louisiana law. The defendant pleased res judicata under the Texas law, and the award in plaintiff's favor was reversed by the United States Supreme Court.

These three cases illustrate the proposition that a State may adopt and enforce the compensation laws of another, or may enforce its own laws in spite of the contract of employment being made in another State, but when it does take jurisdiction, and makes an award, there cannot be another award in another State, notwithstanding the latter has a separate statute upon the subject, which would be

available to the claimant had he not otherwise proceeded under the laws of another State. The result is analogous to that resulting from taking possession of the *res*—viz., the Court first obtaining possession may not be disturbed by actions of other courts having concurrent jurisdiction.

In the matter of liquidation of corporations it has been frequently held that a receiver has no power beyond the jurisdiction of the court appointing him, and consequently his possession or title does not bind the courts of another State. In the case, however, of laws which vest title of an insolvent corporation in a liquidating officer, it has been determined that such law is a part of the corporation's charter and follows it to wherever it is authorized to transact business, and therefore, if by the law of its origin a liquidator acquires title, then such title must be recognized in all other States. (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed 337; *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) In such case it is also competent for a State to adopt the policy of giving preference to resident creditors, where there is property of the insolvent corporation within the State. (*Clark* v. *Williard*, 294 U. S. 211, 79 L. ed. 865.) But, if there are no such creditors then a judgment rendered in another State than that of the residence of the liquidator is entitled to the same force and effect as in the State where it was rendered. It is open to the same attack, and subject to the same defenses. (*Robertson* v. *Pickrell*, 109 U. S. 608, 27 L. ed. 1049.) The tendency of most of the States is to give priority to the title of the liquidator unless a contrary policy is expressed. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Missouri has not expressed such a policy, but, as pointed out later, follows the majority rule.

No case has been called to our attention which gives to the judgments of one State the force and effect that it has therein as against a prior judgment in another State, under which possession of property has been taken by the officer of the latter court. In such instances the rule seems to be uniform that the court which first acquires jurisdiction over the res is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction. *Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457; *Penn Gen-*

eral Casualty Co. v. *Pennsylvania*, 294 U. S. 189, 79 L. ed. 850.

From these applications of full faith and credit we are required to ascertain the principle controlling this case. Illinois has a liquidation law which requires title to the assets of an insolvent insurance company to vest in a liquidator. (Ill. Rev. Stat. 1943, chap. 73, par. 803.) Such a statute is valid. (*People* v. *Niehaus*, 356 Ill. 104.) Missouri has a similar statute, which has been construed substantially the same as that of Illinois. (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S. W. (2d) 1157.) The statute in each instance is merely authority to so place and vest the title, if the occasion requires it, as it (Ill. Rev. Stat. 1943, chap. 73, par. 800) requires a decree and finding of the circuit or superior court of insolvency, in which event the law places a title in the liquidator.

So, in this case, the title of appellee to the property and assets of Chicago Lloyds is based upon a judgment. While Missouri would have the power to give priority to Missouri creditors in the property of Chicago Lloyds located in that State, (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160,) it has not done so; nor is there any proof there ever were any assets in Missouri at the time appellant obtained a judgment. The Illinois decree appointing a liquidator vested title and possession in him. This was known to appellant, because he filed a claim with the liquidator, in accordance with the Illinois statute. The superior court of Illinois, by a decree finding insolvency, thus had obtained jurisdiction of the res by the law vesting title in liquidator, and such liquidator is entitled to keep and retain such possession to the exclusion of the process of any other court (*Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457.) There being no Missouri law to the contrary this would likewise apply to the assets in Missouri. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Under the law both of Missouri and Illinois it is plain no possession could be had by virtue of a Missouri judgment entered long after a decree finding facts which would vest title in a liquidator. Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise recognize the bind-

ing effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts.

Considered in the light of a claim what rights does a judgment obtained by appellant carry? We have held under a similar law that a judgment against a corporation, after title to its assets had passed to a liquidator, gave plaintiff no rights. (*Evans* v. *Illinois Surety Co.* 319 Ill. 105.) The Missouri court has reached substantially the same result. (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S. W. 2d 1157.) The judgment of another State under the Federal statute enacted by authority of the full-faith-and-credit provisions (28 U.S.C.A., sec. 687) is entitled to the *same* credit that it would have in the State of its rendition. In Missouri, not only the statute, but the construction of the statute, is similar to the law of Illinois, and had a liquidator been decreed in the State of Missouri, appellant either could not have had his judgment or, if he obtained it after the decree of insolvency, could not have enforced it against the property in the hands of the liquidator. He can have no greater rights in Illinois, under his judgment, than he could have in Missouri. (*Adams* v. *Saenger*, 303 U. S. 59, 82 L. ed. 649.) Therefore, to disallow appellant's claim would afford the same effect to his judgment in Illinois that, under the same circumstances, it would have had in Missouri. Under this view the judgment of the superior court was correct.

We again consider the force of appellant's judgment as a claim. He recognized the title of the liquidator and the procedure thereunder, and filed his claim within the time fixed by such officer. The claim had not yet been reduced to judgment. It was a contingent claim. A provision of the Illinois Statute with respect to contingent claims provides that it is entitled to share in the assets of the insolvent insurance company where such claim becomes absolute on or before the last day fixed for the filing of the proof of claim, or the assets of such company show there is a surplus over claims allowed, to be distributed. (Ill. Rev. Stat. 1943, chap. 73, par. 821.) Appellant's contingent claim never became absolute by November 15, 1938. No attempt was made to prove such amount prior to that time. Subsequently, upon default, he obtained judgment

in the St. Louis courts, but that was more than two years after the time had expired for proving claims. Under section 209, subsection (3), (Ill. Rev. Stat. 1943, chap. 73, par. 821,) if there is a surplus over the amount required to pay those who have filed claims, he would be entitled to participation in such surplus. Full faith and credit perhaps would require allowance of the claim as to this, but there is no showing in this case that there is any surplus.

The Title of appellee is acquired under the statutes of Illinois and a decree of one of its courts of general jurisdiction. No authority has been called to our attention which gives a judgment acquired against the insolvent debtor, after its assets have been taken possession of and vested in a liquidator, priority over a judgment or decree which requires the distribution of the assets among those filing claims in pursuance of the law. Under such circumstances it seems logical to hold appellant was bound under the full-faith-and-credit clause to recognize the effect of this Illinois decree, as the courts of Illinois would be required to do had the judgment in Missouri been first made a lien, and since the liquidator appointed by the Illinois court acquired possession first, any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree.

Aside from the case of a surplus in the hands of the liquidator, we do not see how the cases cited by appellant have any application. All of those cases cited involving receivers are limited in their effect by the fact that a receiver has no authority whatever beyond the jurisdiction of the court which appointed it, and hence have no application to a situation in which the liquidator has acquired title to property which the courts of other states are bound to recognize.

This case comes within the class where the holder of a foreign judgment, who is given no special rights against an insolvent corporation, may not, because of the judgment alone, impose a different method of distribution of its assets than the court administering the insolvent estate. Certainly no decision has been cited by appellant which would give him rights he would not have under like circumstances in the State of Missouri. We find no authority

for the proposition that the full-faith-and-credit clause of the constitution of the United States or the enabling acts thereunder are authority for placing the creditor who has obtained the judgment in a better position in another State than he would be in his own.

Appellant also claims the court improperly allowed the master the sum of five hundred dollars, without proof of the number of days he had devoted to examination of the pleadings. An allowance for testimony taken was granted at the rate fixed by statute. Under the heading of "Fees to be fixed by the court" the master claimed $500 for reading pleadings, testimony, examining briefs and authorities, hearing arguments, preparing findings of fact and law, drawing report, and passing upon objections filed thereto. He did not specify the amount of time he had spent in such work. When objections were made to this item of the master's fees the court heard the testimony of the master in open court, and made a finding that $500 was a reasonable fee for the services performed. No certificate of the evidence given by the master has been preserved.

While it is necessary that the amount of time the master devotes to service of this character be shown (*Litwin* v. *Litwin*, 375 Ill. 90,) it must be presumed the amount of time spent by the master was disclosed to the court, when the decree recites he heard the master's testimony on objections and makes a finding of the reasonable value of the services rendered. In the Litwin case the lump-sum claim of the master was disallowed because he had an opportunity to explain same to the court and did not do so. In the instant case the master did make a satisfactory explanation to the court. If appellant thought the proof was insufficient he should have preserved the evidence, to enable us to pass upon it.

Both parties have argued other questions, which we have considered but do not deem it necessary to decide because the foregoing fully disposes of the merits of the case.

We are of the opinion that the order of the superior court of Cook county in disallowing the claim of appellant,

and fixing the fees of the master, should be, and is in both respects affirmed.

Order affirmed.

(See amendment made of the Court's own motion, on following page.)

The Court, of its own motion, amended its opinion by deleting the following:

On page 3, in the last sentence of the second paragraph on that page, the words—

> "and no attempt made to establish and prove a contingent claim, as provided by section 209, subsection 3, of the Illinois Insurance Code, discussed later in the opinion,"

were deleted. The sentence was changed to read:

> "The only evidence presented by claimant was the record of this judgment, obtained in the Circuit Court of the City of St. Louis."

On page 12 of said opinion, the last paragraph, which read as follows, was deleted.

"We again consider the force of appellant's judgment as a claim. He recognized the title of the liquidator and the procedure thereunder, and filed his claim within the time fixed by such officer. The claim had not yet been reduced to judgment. It was a contingent claim. A provision of the Illinois Statute with respect to contingent claims provides that it is entitled to share in the assets of the insolvent insurance company where such claim becomes absolute on or before the last day fixed for the filing of the proof of claim, or the assets of such company show there is a surplus over claims allowed, to be distributed. (Ill. Rev. Stat. 1943, chap. 73, par. 821.) Appellant's contingent claim never became absolute by November 15, 1938. No attempt was made to prove such amount prior to that time. Subsequently, upon default, he obtained judgment in the St. Louis courts, but that was more than two years after the time had expired for prov-

ing claims. Under section 209, subsection (3), (Ill. Rev. Stat. 1943, chap. 73, par. 821,) if there is a surplus over the amount required to pay those who have filed claims, he would be entitled to participation in such surplus. Full faith and credit perhaps would require allowance of the claim as to this, but there is no showing in this case that there is any surplus."

(4026)

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IN THE

SUPREME COURT OF THE UNITED STATES.

PEOPLE ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, (Respondent) Appellee,

CHARLES B. MORRIS, (Claimant) Appellant.

No. [redacted] 62

APPELLANT'S BRIEF ON THE QUESTION OF JURISDICTION AND ON ~~APPELLANT'S~~ APPELLEE'S MOTION TO DISMISS.

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IN THE

SUPREME COURT OF THE UNITED STATES.

PEOPLE ex rel. PAUL F. JONES, Director of Insurance of the State of Illinois, (Petitioner) Appellee,

vs.

CHICAGO LLOYDS, (Respondent) Appellee,

CHARLES B. MORRIS, (Claimant) Appellant.

No. 961.

APPELLANT'S BRIEF ON THE QUESTION OF JURISDICTION AND ON APPELLANT'S APPELLEE'S MOTION TO DISMISS.

The statement of appellee disclosing matter making against the jurisdiction of this Court is incorrect, misleading and ambiguous.

Incorrect.

While the statement uses the term "insurance estate" on the first page thereof in referring to Chicago Lloyds, it deals with the question as though "Chicago Lloyds" were an Illinois created corporation, which was not only dissolved, but had had its charter forfeited by the decree of the Illinois Superior Court on February 9, 1938; whereas the record conclusively discloses, that "Chicago Lloyds" was a voluntary association and aggregation of numerous individuals (R. 56), under a mutually formed agreement, whereby they carried on an insurance business in such

States of the Union as they desired to enter, upon compliance with the terms of their respective laws. They formed their association voluntarily, and in order to do business in the State of Illinois, their contract of association had to conform to the laws of that State, entitled "Article V. Lloyds", Chapter 73, Revised Statutes 1937.

(a) Lloyds' Plan.

Sections 698 to 713, inclusive, thereof provide that individuals and aggregations of individuals may transact an insurance business in the State of Illinois through an attorney-in-fact under the name "Lloyds" or under a "Lloyd's" plan of operation. That such business may be transacted by either a Domestic Lloyds, "which means a Lloyds having the home office in the State of Illinois," or a Foreign Lloyds, "which means a Lloyds having the home office in any State of the United States other than Illinois," and an Alien Lloyds, "which means a Lloyds having its home office in any country other than the United States"; and that the principal office of a domestic Lloyds, shall be maintained in the State of Illinois, and that it may be authorized to transact any and all of the kind or kinds of business enumerated in Section 616 of said Chapter 73, upon filing a Declaration, setting forth, the name of the attorney-in-fact, and the name or designation under which contracts are to be effected; the location of the office of the attorney-in-fact, and addresses of the individual underwriters; the class or classes of insurance which such Lloyds proposes to transact, "and such other provisions not inconsistent with the law, which may be deemed by the attorney-in-fact or the underwriters to be necessary or advisable"; providing further, that upon the execution of this Declaration by the attorney-in-fact for a domestic Lloyds, and the delivery of a duplicate original of the Declaration, and also a copy of the power

of attorney of the attorney-in-fact, and an instrument authorizing service of process upon the Director, provided for in Section 717 of this Chapter, and copies of all the forms of insurance policies or contracts proposed to be used by it, and the forms of applications therefor, and two organization bonds or the cash or securities provided for in Section 705 of this Chapter. It is further provided by said Sections that when those documents and papers are delivered to the Director, and are approved by the Director, that the Director shall thereupon place on file in his office all of such documents, except one of the duplicate originals of the Declaration, and shall endorse upon such duplicate original, his approval, and the month and day and year of such approval thereof, and deliver that back to the attorney-in-fact. Upon such approval of the Declaration, the Director shall issue to the attorney-in-fact **a permit**, which shall expire at the end of one year from its date, authorizing the attorney-in-fact to solicit deposits of underwriters in accordance with this Code, and in accordance with the power of attorney filed with the Director, and to do such other acts as may be necessary or proper in order to complete the organization of such Lloyds, and to entitle it **to receive a certificate of authority**, to transact an insurance business. Section 708 provides that when the Director has been notified that the underwriters have deposited a sum not less than the minimum assets required by Section 711 of this Chapter, the Director shall conduct an examination of such Lloyds; and if he finds that the organization has been completed, and that all other requirements of this Code have been met, he shall issue to such Lloyds **a certificate of authority** to transact the kind or kinds of business specified in the Declaration. Section 699 provides it shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State, until it has first obtained and has in force a certificate of authority issued by the Director.

ALL certificates of authority issued under the provisions of this Article shall terminate on the 30th day of June, next following the date of issuance, and may be renewed upon compliance with this Code.

Article XIII of said Chapter 73, R. S. Ill. 1937, is entitled "Rehabilitation, Liquidation, Conservation **and Dissolution** of Companies." Section 799 thereof provides that the Article shall apply to every company which is doing or attempting to do, or which is representing that it is doing an insurance business in this State. Section 800 provides grounds for "rehabilitation and liquidation of domestic company." Section 808 provides for **an order of dissolution** as follows— "If the company against whom the petition for liquidation is filed be a corporation, **and the petition prays for dissolution** of such company," the Court shall have such jurisdiction either before or after final **liquidation** of the property, business and affairs of such company, **after** service of an order to show cause and a full hearing, to enter a decree **dissolving** such company.

The petition filed by the Director of Insurance (R. 2) shows on its face that Chicago Lloyds was not a corporation; the prayer did not ask for a dissolution (R. 3); the decree (R. 5) contains no order of dissolution.

Chicago Lloyds, desiring to transact its business in the State of Missouri, solicited and obtained the consent of the State of Missouri to transact its business therein; and in compliance with the Missouri Statute, Section 5894, filed a written instrument or power-of-attorney with the Superintendent of Insurance to receive service of process which is valid and binding, and deemed personal service upon the company "so long as it shall have any policies, or **liability** outstanding in this State, although such company may have withdrawn, been excluded from, or ceased to do business in this State."

(b) **Proceeding in St. Louis Was Not "Ex Parte."**

Appellee would give this Court the impression that the proceeding in St. Louis was an "ex parte" proceeding. The record in this case, as well as the opinion of the Illinois Supreme Court, shows that service was had not only upon the Superintendent of Insurance of Missouri, but also upon all of the defendants in the case; that the defendants filed answers, and the case was at issue on February 9, 1938, when the decree of **liquidation** was entered in the Superior Court of Illinois. Furthermore, the characterization, that this was an "ex parte proceeding" completely ignores the following facts, namely: that it was on the day of the trial that counsel for "Chicago Lloyds" notified the Circuit Court in St. Louis that he had been requested by the Liquidator to withdraw; thereupon the case proceeded to trial; a jury was waived, the Court took the case under advisement; and instead of rendering a judgment at the conclusion of the case, instructed the Clerk of the Circuit Court of St. Louis to write the Liquidator, that the case was under submission, and to request his reaction (Claimant's Exhibit 4, R. 53). The Liquidator received the letter, and in reply wrote (Liquidator's Ex. 3, R. 59) that Chicago Lloyds was being liquidated in proceedings pending in the Superior Court of Cook County; that the order appointing the Director of Insurance of Illinois as Liquidator was entered February 9, 1938; that the attorney representing Chicago Lloyds in the proceeding in Missouri had withdrawn at the Liquidator's request, because it was the Liquidator's position, that the plaintiff in said suit was enjoined from proceeding to obtain judgment against Chicago Lloyds; and that the injunction order entered February 9, 1938, specifically provides (R. 60): "All persons are hereby immediately restrained and enjoined from obtaining, or attempting to obtain, preferences, judgments, attachments or other like

liens * * * until the further order of the Court." The Liquidator further contended in said letter, that the liquidation proceeding in the State of Illinois was an action in rem, analogous to a bankruptcy proceeding, and that the injunctive order is good, without notice, and without service of process upon a violator of the same; and that he believes that the plaintiff by asking the Court to proceed to judgment against Chicago Lloyds, is in direct violation of that injunction, and that should he bring such a judgment into Illinois and attempt to enforce it there, that he would be violating the injunctive order.

Ambiguous and Misleading.

Appellee's statement that the basic issue in this case is whether a prior Illinois judgment, which vests an insolvent estate in a Liquidator, for the purpose of having it distributed according to the Illinois Statute, is entitled to priority over an ex parte judgment, entered in Missouri against the insolvent company three years after the entry of the liquidation order in the Illinois Court, is ambiguous, because it does not state what manner of priority over the judgment of the Missouri Court is claimed for the order of the Illinois Court directing liquidation.

Appellant Morris commenced the action in which the Missouri judgment was rendered, on August 24, 1934,—about three and one-half years before the order directing liquidation was entered by the Illinois Court. This action was pending and awaiting trial in the Missouri Court at the very time the order directing liquidation was entered by the Illinois Court. The Missouri Court had jurisdiction over the parties and of the subject matter. After the order directing liquidation was entered, Morris presented to the Liquidator his verified claim, and attached thereto a copy of the complaint which had been filed in the Missouri Court, and stated therein, that when said suit in Mis-

souri had been decided and judgment entered, he would file an amended and supplemental claim, and attach thereto a properly authenticated copy of such judgment. The Liquidator refused to defend the Missouri action, as above stated, although in accordance with the decision of this Court, in the case of Relfe v. Rundel, 103 U. S. 222, 28 L. ed. 337, he had that right if he desired to, or intended ever to dispute the merits and the liability and the amount thereof.

Appellee's statement that appellant demanded full faith and credit for the judgment "against the res in the possession of the Illinois Liquidator," or sought to have "effect" given to the judgment against the assets held by the Illinois Liquidator, suggests and implies that appellant sought to enforce the Missouri judgment by levy or other sequestration of property in the possession of the Liquidator. No lien against such assets, and no preference or priority over other unsecured creditors was, or is, asserted.

The basic question is whether consistently with Section 1 of Article IV of the Constitution of the United States, full faith and credit may be refused to a judgment for money, rendered by a competent court of one State having jurisdiction of the subject matter and of the parties, in an action against a "Lloyds" which was commenced many years before the entry of an order directing liquidation of that Lloyds, by a Court of another State, merely because the **judgment** of the former state was rendered **after** the entry of the order directing liquidation of that Lloyds. Expressed differently, the question is whether the Court which enters an order directing the liquidation of a Lloyds, has exclusive jurisdiction to liquidate claims against that Lloyds, notwithstanding the full faith and credit clause of the constitution of the United States, and whether it may refuse to give credit to a judgment of a

competent Court of a sister State having jurisdiction of the subject matter and of the parties, rendered after, but in an action commenced and pending long prior to the entry of an order directing liquidation. Or, expressed in still another way, the question is: Does the entry of an order directing liquidation of a Lloyds which is merely licensed to do business in the State of Illinois, and likewise licensed to do business in the State of Missouri, prevent the Courts of the sister State, Missouri, from rendering valid judgments in suits pending before them against that Lloyds, so that if the judgments are rendered in such suits, the state of the Court which entered the order directing liquidation of that Lloyds, is not required to give full faith and credit to the judgment so rendered by the sister State?

The Supreme Court of Illinois, by its decision in this case has held that, under the Illinois Statute which provides that title to the assets of a "Lloyds" which is being liquidated under its laws, vests in the Liquidator title to all of its property, wherever situated, whether in Illinois or Missouri, and that full faith and credit need not be given to the judgments of a sister State rendered subsequent to such an order of liquidation, although the case had been pending prior thereto, with jurisdiction of the parties and of the subject matter, as above stated, and when that Lloyds was also licensed in Missouri.

We contend that, so construed, the statute is repugnant to Section 1 of Article IV of the Constitution of the United States, and that therefore there is drawn in question the validity of this statute, when so construed and given effect, on the ground of its being repugnant to the constitution of the United States.

Although it is apparent from the quotations from the opinion of the Supreme Court of Illinois appearing in appellee's statement, that that Court actually rested its de-

cision upon the Illinois statutes, appellee argues, nevertheless, that the decision "merely involved the construction of the Illinois statutes." It is the settled rule of this Court that it must accept the decision of the highest court of the State fixing the meaning of State legislation, as though such meaning had been specifically expressed therein; and that, since the construction becomes part of the statute, that construction is to be read as though in its text (Knights of Pythias v. Meyer, 265 U. S. 30, 32, 34, 68 L. Ed. 885). Therefore, since the Supreme Court of Illinois, by its decision in this case, has given the Illinois statute a construction and meaning that full faith and credit should not be given to judgments of sister states, that construction and meaning must be read into the statute as though incorporated in the text thereof.

Appellee has advanced five arguments going, not to the question of the **right to appeal** from the decision of the Supreme Court of Illinois, but to the **correctness** of that decision.

1.

He asserts that appellant was not "deprived of full faith and credit" and that the Missouri judgment "merely yields to the prior judgment of the Illinois court." Looking through the niceties of expression, the **fact** remains, that Illinois has refused to give any credit to the Missouri judgment. It disallowed the claim based thereon, and it is the sheerest sophistry to contend, as appellee contends, that full faith and credit was not denied to the Missouri judgment.

Appellee asserts, obscurely, that "full faith and credit **applied** to this Illinois court order of February 9, 1938" (the order directing liquidation). What does appellee mean? Does he mean that, as an abstract proposition, full faith and credit ought to be given to it, in a sister State?

How was full faith and credit **asked** for in this order? In what State? In what court? In what action? That order was not presented to the Missouri court **in bar** of the action pending there. Appellee argues that, because this order was "prior"—that is, was entered earlier in point of time than the Missouri judgment—the "judgment has no effect against the Liquidator." Appellee is simply begging the question. The Constitution commands, generally, that full faith and credit shall be given to judgments of sister States.

2.

The second argument which appellee has advanced and which, like the first, goes, not to the **right** to appeal, but to the correctness of the decision of the Supreme Court of Illinois, is based upon the principle that the court which first acquires jurisdiction of the res is entitled to retain and dispose of it, in accordance with the law and processes of its jurisdiction. He cites **Harkin v. Brundage**, 276 U. S. 36, 72 L. Ed. 457, and **Penn General Casualty Co. v. Pennsylvania**, 294 U. S. 189, 79 L. Ed. 850, in support of this principle. These cases involve a conflict between two courts of concurrent jurisdiction over which should **administer** the res. There is no such question in this case. There is here no conflict over the res. Missouri asserts no jurisdiction over it. The appellant does not question the exclusive right of the Liquidator to liquidate the assets and to distribute the proceeds in due course among **all** the creditors of Chicago Lloyds. The question here is whether appellant, by virtue of his judgment, is entitled to **share** in the proceeds of the res as a general creditor. In addition, the cases cited do not hold that the court which first acquires the res has exclusive jurisdiction to liquidate claims, and **Riehle v. Margolies**, 279 U. S. 218, 73 L. Ed. 669, holds the other way.

3.

Appellee then argues that appellant "having filed a claim in the liquidating proceedings and having failed to perfect his rights under local law," is barred "for failure to follow the local law in **proving** his claim." Presumably appellee means that appellant was bound to prove his claim de novo, bring his witnesses and try his case before the Liquidator. However, not even any local law is referred to, which compelled appellant to **prove** his claim de novo and, if the local law relied upon is the decision of the Supreme Court of Illinois in this case, it is, in our opinion, repugnant to the Constitution of the United States in so far as it denies full faith and credit to the judgments of sister States, which fixes the liability and the amount. We may here observe that if the contention of appellee be correct, that the Liquidator would have a complete defense in a trial de novo on a cause of action based upon a tort committed in 1932, by pleading the two-year statute of limitation of Illinois and thus completely destroying appellant's claim. Illinois cannot promulgate a local law either by legislative enactment or by decision of its courts, which denies full faith and credit to judgments of sister States. Such a law would violate Article VI of the Constitution of the United States, which expressly prohibits the enforcement of any such state law. The argument reduces itself to this—that appellant was required to follow a local law repugnant to the Federal Constitution, and that failure to do so **bars** the assertion of rights under that Constitution.

4.

The fourth argument advanced by appellee, which likewise goes to the **correctness** of the decision of the Supreme Court of Illinois, and not to the **right** to appeal therefrom, is that the Missouri judgment is void. The theory upon which it is contended that the Missouri judg-

ment if void, is that "Chicago Lloyds" ceased to be a legal entity either upon the day when the order directing liquidation was entered, or on the following June 30, 1938, when its certificate of authority to continue transacting business in Illinois, is supposed to have expired.

However, it is elementary that the entry of an order directing "liquidation of a company" does not work its **dissolution.** Dillon v. Elmore, 361 Ill. 256, 363; People v. West Side Trust & Savings Bank, 362 Ill. 607, 616; Commercial Trust Co. v. Mallers, 242 Ill. 50; Willitts v. Waite, 25 N. Y. 577, 581; Clark v. Williard, 294 U. S. 211, 79 L. Ed. 865. Similarly, it is settled, that the appointment of a Receiver for the property of a company, does not have the effect of abating actions pending against it at the time of the appointment, or of divesting the courts in which such actions are pending of their jurisdiction. 1 C. J. S., "Abatement and Revival," 151-53, Sections 108, 109; 19 C. J., "Corporations," 1206, 1220; 12a C. J., "Corporations," 985; Ohio & Mississippi Ry. Co. v. Russell, 115 Ill. 52, 57; Chemical National Bank v. Hartford Deposit Co., 156 Ill. 522 (aff'd 161 U. S. 1), 40 L. Ed. 595.

The second branch of appellee's theory is that Chicago Lloyds ceases to be a legal entity ipso facto and without acts of its members, or of a court, or of anyone else, upon termination of **a mere authority to transact business in any of the States in which it may have been so licensed and engaged in business.** Argument is unnecessary to demonstrate the fallacy of this contention. Manifestly the failure of even "a corporation" or an association to renew its certificate of authority to transact business in one of the States in which it may have been authorized to transact its business, does not **terminate its legal existence** and does not gain for it immunity from suits. Watertown Fire Insurance Co. v. Russ, 141 Ill. 85.

The Supreme Court of Illinois did not hold in this case, that the Missouri judgment is void.

5.

Finally appellee argues that the decision of the Supreme Court of Illinois is not repugnant to the full faith and credit clause, because it is said, under the statutes and decisions of Missouri, the holder of a judgment rendered in Missouri does not have the right to enforce his judgment against assets located in Missouri, belonging to a dissolved foreign insurance company in liquidation; and that since the full faith and credit clause only requires a sister State to accord the same faith and credit which the judgment would have in the State where rendered, and since appellant did not have a right in Missouri to enforce his judgment against assets located in Missouri belonging to Chicago Lloyds, appellant had no right in Illinois. The fallacy in the above argument lies partly in the supposition that the Missouri judgment is to be enforced against assets, and in the supposition that in Missouri the judgment gave appellant no rights. Appellant does not assert the right to enforce the judgment as a lien against assets in the possession of the Liquidator. He seeks only to have the judgment **allowed**, as a general claim payable in due course of administration. He asserts no lien on assets, and no preference or priority over other creditors. No Missouri case has been cited and we found none, which denied to a judgment of that State the effect it has as an **adjudication of a claim.** The case of McDonald v. Pacific States Life Insurance Company, 344 Mo., page 1, 124 S. W. (2d) 1157, does not hold that a Missouri judgment creditor has no rights, and that he cannot participate as a general creditor in the assets of the judgment debtor, possession of which have been taken by a Liquidator. That case only holds that a judgment creditor cannot levy on property, title to which has passed to a statutory Liquidator of "a dissolved insurance corporation." In fact in that case the Court said at page 1163:

"Respondent is not contending for the right to have his claim paid in the order set forth in the Missouri statute. He is attempting to have his claim paid in full in preference to all other claims, even as to administration expense and taxes."

The right to participate with others, which we ask, is not the same as the right to take the property by levy to the exclusion of others, which the creditor in the McDonald case sought to enforce against the property in Missouri.

As we have observed above, the contentions advanced by appellee are addressed to the correctness of the decision by the Supreme Court of Illinois rather than to the right to appeal from the decision of that Court. We think these arguments ought to have been reserved for the brief on the merits.

Federal Question.

Appellee further contends that this case does not present a substantial federal question worthy of review in this Court. In arguing the question, however, he assumes and infers that this "Lloyds" was in fact an Illinois created **corporation**, and that in a proper proceeding in the Court of Illinois brought for the purpose of dissolving such a corporation, that a dissolution order had been actually entered and the "charter" of such corporation had been forfeited; whereas, in this instant case, "Chicago Lloyds" had no "charter," was not an Illinois created "corporation," but was a voluntary association and aggregation of a number of individuals under an express contract between themselves, whereby they appointed an attorney-in-fact to transact an insurance business for them, not only in the State of Illinois, but also in any other States of the United States from which they would be able to procure a license on compliance with and in

accordance with the burdens and liabilities that they would be required to assume in each of said several states and was merely licensed, by yearly renewals of such license, to transact its business in the State of Illinois.

By using such a suppositious dissolved corporation as a straw man, appellee contends that the liquidation of insolvent insurance companies under State statutes would be hopelessly confused were the Liquidator appointed by the domiciliary State forced to go into each State in which suits were pending against the dissolved and dead insurance company and there defend against such claim.

The very statutes of Illinois distinguish between "rerabilitation," "liquidation" and "dissolution," and the decisions of the State of Illinois which we have above cited, clearly disclose that **even when** dealing with an Illinois created **corporation,** if the Court merely appoints a Liquidator to whom, under the law, the assets of a corporation are transferred, it is necessary for the Court to make a separate and distinct and additional order to effect the dissolution, and forfeiture of the charter of such a corporation. Perhaps that is the reason why, on page 1 of appellee's statement, he refers to this "Chicago Lloyds" as an "estate."

We submit that the statutes, as construed, are repugnant to the Federal Constitution, and that the question whether the statutes are so repugnant, of itself, presents a substantial federal question worthy of review—expressly because the Supreme Court of Illinois by its decision has engrafted an exception to the full faith and credit clause of the Constitution of the United States applicable to a factual situation such as that presented in this case, notwithstanding this Court has said in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438, 88 L. Ed. 149:

> "We are aware of no such exception in the case of a money judgment rendered in a civil suit."

The Supreme Court of Illinois, in its opinion in this case, has stated with reference to the question presented by it:

> "These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbiter of such questions arising under the full faith and credit clause."

And again in its opinion, the Supreme Court of Illinois states:

> "This second type of case represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere."

The above statement, announced by that Court, restates the doctrine announced by that Court in Kenney v. Royal Order of Moose, 285 Ill. 188, which this Court reversed in Kenney v. Supreme Lodge, 252 U. S. 411, 64 L. Ed. 638. This statement therefore discloses a misconception of the full faith and credit doctrine as announced by this Court in that case, and as the doctrine applies to sister State judgments. We therefore submit that the failure of the Supreme Court of Illinois to follow the doctrine of Kenney v. Supreme Lodge, 252 U. S. 411, presents a substantial federal question worthy of review.

Appellee contends, and, apparently was sustained by the Supreme Court of Illinois in his contention, that the court which orders liquidation of assets of an insurance corporation of that State, which by its decree has been dissolved and had its charter forfeited to the State, has exclusive jurisdiction to liquidate claims against that corporation, arguing that the liquidation proceeding in such a matter is a proceeding in rem. This Court, however,

held in Riehle v. Margolies, 279 U. S. 218, 223-224, that the liquidation of a claim is a proceeding in personam, and that the receivership court does not have exclusive jurisdiction to liquidate claims. A proceeding to liquidate a claim only establishes rights. A judgment liquidating a claim does not deal with property and does not order distribution. It merely adjudicates a question which precedes distribution. The notion that a receivership court in possession of the debtor's property has exclusive jurisdiction to liquidate claims against the debtor on the theory that the proceeding is in rem has been exploded. Commonwealth Co. v. Bradford, 297 U. S. 613, 619, 80 L. Ed. 920; General Baking Co. v. Harr, 300 U. S. 433, 81 L. Ed. 730; Fischer v. American United Ins. Co., 314 U. S. 549, 555, 86 L. Ed. 444; U. S. v. Bank of N. Y. Co., 296 U. S. 463, 478, 80 L. Ed. 331.

Illinois cannot by its statute deprive courts of Missouri of jurisdiction to hear and determine causes pending before them. The Illinois statute (which does not expressly provide that the Court of liquidation shall have exclusive jurisdiction to adjudicate claims) can have no extra-territorial effect. Therefore, competent courts of Missouri which have jurisdiction over the subject matter and parties, may proceed to hear and determine causes pending before them, and the State of Illinois cannot retaliate by refusing full faith and credit to the Missouri judgment, in violation of the Federal Constitution.

Moreover, if it were desired to present the question whether the Missouri court ought to render a judgment in a case pending before it after an Illinois court has entered an order directing liquidation of a Lloyds, that question should have been raised and decided in the Missouri court, and, we respectfully submit, present substantial questions worthy of review here.

The argument presented by appellee, that appellant "could not effectually change the **character** of his claim" from an unliquidated claim to a liquidated claim, begs the question. Full faith and credit for a mere **claim** are not required by the Constitution, but they are required for a **judgment** of a sister State. Further, the argument that the liquidating Court had entered an injunction cannot avail. Appellant was not a party to the liquidation proceedings, was not served with the injunction, had no notice or knowledge thereof, and was not even within the State of Illinois, and within the jurisdiction of the liquidating court, and further, by continuing to prosecute his Missouri case to judgment, he was not violating **that** injunction. Therefore, that court was powerless to restrain him from prosecuting his pending suit in Missouri.

Further, the argument "that the full faith and credit clause does not affect the power of a State to control the transfer and distribution of property situated within its borders," is also without force, because no such question is involved. The Missouri judgment does not control the transfer and distribution of property in Illinois. It is entitled merely to recognition in Illinois, as an adjudication, that Chicago Lloyds is indebted to appellant in the amount of the judgment. It does not in any way affect the transfer or distribution of property. When Illinois proceeds to distribute the assets of Chicago Lloyds, the appellant, as a judgment creditor, will merely **share** with other creditors in accordance with Illinois law.

We respectfully submit that the questions presented by this appeal are of paramount importance, not alone to the appellant, but to the nation at large. Substantial and vital Constitutional questions other than full faith and credit are presented. The power of States to whittle down the scope of the full faith and credit clause, the very purpose

of which was to make the States integral parts of a single nation, throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the State of its origin (Milwaukee County v. M. E. White Co., 296 U. S. 268, 276-277, 80 L. Ed. 220) ought not be extended. One effect of that clause was definitely, expressly and clearly stated by this Court to be "a nationally unifying force" (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 439-440, 88 L. Ed. 149). If the States are to be allowed to engraft "exceptions," the effect of the full faith and credit clause as a "nationally unifying force" will be impaired.

In the jurisdictional statement, which was filed by appellant with the petition for appeal, there was included and attached thereto, the entire opinion which was originally filed by the Supreme Court of Illinois on September 19, 1945. The motion for rehearing was overruled on November 19, 1945. Either at that time or at a later date (the record of the Illinois Court does not show), the Court amended its opinion by deleting therefrom certain portions. The praecipe filed by appellant called for both the original opinion and the modified opinion (from which portions of the original opinion were deleted). When the record was certified by the Clerk, the deleted portions were omitted. We called the attention of the Clerk of the Supreme Court of Illinois to this fact and asked him to include the original opinion, but he informed us that he had been instructed not to include the deleted portions, that the Court did not consider the portions deleted from the original opinion as a part of the Court's opinion. We are attaching deleted portions of the opinion as originally filed, as an appendix to this brief.

This appeal was properly taken under Section 237 (a) of the Judicial Code, but if this Court should think other-

wise, we respectfully submit that, in view of the importance of the questions involved, the appeal may stand as a petition for certiorari, and allowed as such.

Respectfully submitted,

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APPENDIX.

The Court, of its own motion, amended its opinion as follows:

On page 3, in the last sentence of the second paragraph on that page, the words:

> "and no attempt made to establish and prove a contingent claim, as provided by section 209, subsection 3, of the Illinois Insurance Code, discussed later in the opinion,"

were deleted. The sentence was changed to read:

> "The only evidence presented by claimant was the record of this judgment, obtained in the Circuit Court of the City of St. Louis."

On page 12 of said opinion, the last paragraph was deleted. It read as follows:

> "We again consider the force of appellant's judgment as a claim. He recognized the title of the liquidator and the procedure thereunder, and filed his claim within the time fixed by such officer. The claim had not yet been reduced to judgment. It was a contingent claim. A provision of the Illinois Statute with respect to contingent claims provides that it is entitled to share in the assets of the insolvent insurance company where such claim becomes absolute on or before the last day fixed for the filing of the proof of claim, or the assets of such company show there is a surplus over claims allowed, to be distributed. (Ill. Rev. Stat. 1943, chap. 73, par. 821.) Appellant's contingent claim never became absolute by November 15, 1938. No attempt was made to prove such amount prior to that time. Subsequently, upon default, he obtained judgment in the St. Louis courts, but that was more than two years after the time had expired

for proving claims. Under section 209, subsection (3), (Ill. Rev. Stat. 1943, chap. 73, par. 821,) if there is a surplus over the amount required to pay those who have filed claims, he would be entitled to participation in such surplus. Full faith and credit perhaps would require allowance of the claim as to this, but there is no showing in this case that there is any surplus."

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946.

No. 62.

CHARLES B. MORRIS,
Appellant,

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois.

Appeal from the Supreme Court of the State of Illinois.

BRIEF OF APPELLANT.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946.

No. 62.

CHARLES B. MORRIS,
Appellant,

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois.

Appeal from the Supreme Court of the State of Illinois.

BRIEF OF APPELLANT.

Opinion Below.

The opinion of the Supreme Court of Illinois is reported: The People ex rel. Paul F. Jones, Director of Insurance, v. Chicago Lloyds et al., 391 Ill. 492, 63 N. E. (2d) 479.

The Date of the Judgment to Be Reviewed Is September 19th, 1945 (Motion for Rehearing Denied November 19, 1945).

This Appeal was allowed February 14, 1946 (T. 116).

JURISDICTION.

There have been filed herein a printed "Statement as to Jurisdiction" and a brief by appellant on the question of jurisdiction and on appellee's Motion to Dismiss the appeal. Therefore it is necessary only to mention briefly herein the facts and the law which give this Court jurisdiction.

Section 344 (USCA), Title 28 (Judicial Code, 237 Amended), sustains the jurisdiction of this Court. This section provides:

> "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had * * * where there is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the constitution, treaties, or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

Cases Sustaining Jurisdiction.

The following cases sustain the jurisdiction of this Court:

Meyer v. Fleming et al., Trustees, decided 2/4/46, 326 U. S. 707, 66 SC 382, 90 L. Ed., p. 422;
Charleston etc. Ass'n v. Alderson, 324 U. S. 182, 89 L. Ed. 857;
Memphis etc. Gas Co. v. Beeler, 315 U. S. 649, 86 L. Ed. 1090, 62 SC 857;
John P. King Mfg. Co. v. City Council of Augusta, 277 U. S. 267, 89 L. Ed. 861, 65 S. Ct. 627;
Standard Scale Co. v. Farrell, 249 U. S. 571, 63 L. Ed. 780, 39 SC 380;
Williams v. Bruffy, 96 U. S. 716, 24 L. Ed. 743;
Zucht v. King, 260 U S. 174, 67 L. Ed. 194, 43 SC 24;

Reinman v. City of Little Rock, 237 U. S. 171, 59 L. Ed. 900, 35 SC 511;
Atlantic Coast Line etc. v. City of Goldsboro, 232 U. S. 548, 58 L. Ed. 721, 34 SC 364;
Bacon v. Texas, 163 U. S. 207, 41 L. Ed. 132, 16 SC 1023;
Knights of Pythias v. Meyer, 265 U. S. 30, 32, 34, 68 L. Ed. 885.

There is drawn in question the validity of Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Pars. 799-806, 808, 820). (Set out in Appendix.)

The Supreme Court of Illinois, the court of last resort in said State, has decided in favor of the validity and legal applicability and effect to be given to said sections. Appellant has contended at all times and at all stages in the proceedings in the courts of Illinois, when the question arose, and now contends in this Court, that said sections of the Illinois Insurance Code, according to the meaning and effect given them by the decision of the Supreme Court of Illinois in this case, are repugnant to the Constitution of the United States in the following respects:

First: Said sections, according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as if in the text) are repugnant to Section 1 of Art. IV, because by that meaning they authorize the refusal to give full faith and credit to sister-states' money judgments based upon a civil cause of action.

Second: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 2 of Art. IV, because by that meaning they prevent appellant from resorting to the

courts of Illinois and so deprive him, a citizen of the State of Missouri, of the privileges and immunities of citizens in the several states.

Third: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 1 of Amendment XIV providing, in part, that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; because, by that meaning, they prevent appellant from resorting to the courts of Illinois; they prevent appellant from resorting to the courts of Missouri (inasmuch as Illinois refuses to recognize the judgments of Missouri); they deprive appellant of his right as a citizen of the United States to have full faith and credit given to the judgment he recovered in Missouri.

Fourth: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 1 of Amendment XIV providing in part: "Nor shall any State deprive any person of * * * property, without due process of law", because, by that meaning, they deprive appellant of property—his Missouri judgment—without due process of law.

Fifth: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Section 1 of Amendment XIV providing in part: "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws", because, by that meaning, they deny to a Missouri judgment creditor the right to share in the debtor's property ratably in proportion to his claim, with other unsecured creditors. They discriminate against the appellant upon

the ground merely that he has had his claim adjudicated on its merits in Missouri, rather than before the court of the liquidator in Illinois.

Sixth: Said sections according to the meaning given them by the Supreme Court of Illinois (which meaning becomes a part thereof and is to be read as though in the text) are repugnant to Art. VI, which provides in part: "The Constitution * * * shall be the supreme Law of the Land," because by that meaning, they subordinate the federal Constitution to a State Law.

Appellant had a valid, final and unsatisfied Missouri judgment against Chicago Lloyds, based upon a tort committed in Missouri in October, 1932, for which on August 24, 1934, he had filed suit for damages against Chicago Lloyds, in the Circuit Court of the City of St. Louis, Missouri. This suit was at issue and pending for trial in Missouri, on February 9th, 1938, when liquidation proceedings were instituted in the Superior Court of Cook County, Illinois, by the Director of Insurance of the State of Illinois, against Chicago Lloyds, under the provisions of the said Illinois Insurance Code (T. 1).

The Missouri court had jurisdiction of the subject-matter and of the parties, the defendants having been personally served and having answered to the merits. While this suit was pending, appellant received notice from the Director of Insurance (as Liquidator) to file his claim before him on or before November 15, 1938, the date set by the Superior Court as the last day for filing claims against Chicago Lloyds; and in response to that notice, Appellant, on September 21, 1938, filed a claim for $100,000 and appended thereto a copy of his petition in the said damage suit then pending in the Missouri Court, together with a statement that when said cause of action was reduced to judgment he would file an amended and supplemental claim (T. 16).

On April 7, 1941, judgment was rendered in the sum of $50,000 in the said Missouri proceeding in favor of Appellant and against Chicago Lloyds; and on August 2nd, 1941, Appellant filed an amended and supplemental claim with said Liquidator (Claimant's Ex. 2, T. 17), together with an exemplified transcript of the judgment and record of proceedings before said Circuit Court of the City of St. Louis, Missouri (T. 29).

On June 10th, 1942, the Director filed his Tenth Report in said Superior Court of Cook County and recommended the disallowance of Appellant's claim (T. 7) on the ground that the Missouri judgment was rendered subsequent to the entry of the Order directing liquidation, and was obtained subsequent to November 15th, 1938, and that said Missouri judgment was obtained in violation of an injunctive order entered by the Superior Court of Cook County on February 9th, 1938. (Sec. 189 is the Injunction Statute of the Illinois Insurance Code; the statute under which the injunctive order, therein relied on by the Director, was issued.)

Appellant thereafter filed lengthy objections and exceptions to the report and recommendation of the Liquidator, which were referred to a Master in Chancery (T. 12).

The Master filed a report recommending that the claim be disallowed on the ground and for the reason that the Missouri judgment was entered in violation of the injunctive order issued in the liquidation proceedings (T. 15), and that the judgment obtained in Missouri was not conclusive against the liquidator or upon the courts of Illinois (T. 19), and that it would be necessary for the appellant to try his case de novo on the merits before the Master (T. 17). To this report exceptions were filed, raising the same constitutional questions and objections that were subsequently raised in the Supreme Court of Illinois and which are now contended for in this Court (T. 24-29, incl.).

The Master overruled these exceptions (T. 28). The Superior Court of Cook County, Illinois, confirmed the report of the Master (T. 44), the court holding that the Missouri judgment had no force or binding effect upon the Liquidator and should not be considered in the liquidation proceedings as evidence of the liability or amount of damages of claimant against the assets of Chicago Lloyds in the liquidation proceedings (T. 44).

The Appellant duly appealed to the Supreme Court of Illinois from said adverse judgment, because of the fact that a federal constitutional question was involved. The entire record and a brief in support of the Assignments of Error was filed, the rules of the Supreme Court of Illinois requiring that said Assignments of Error shall be made in the brief of appellant. Appellee filed an answering brief, wherein he relied not only on the provisions of said Section 189, but for the first time invoked the provisions of Sections 187, 188, 190, 191, 193, 194, 196 and 208 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Pars. 799, 800, 802-806, 808, 820, the provisions of which statutes (including Sec. 189, Par. 801) are set out in an appendix filed at the end of this brief.

In his answering brief, Appellee contended that when said statutes were legally interpreted, construed, applied and given effect, they justified the Supreme Court of Illinois in affirming the judgment on the additional ground, that notwithstanding the respondent, Chicago Lloyds, was in fact a mere voluntary unincorporated association of individuals, transacting an insurance business in several other States of the Union, including the State of Missouri, besides the State of Illinois; and notwithstanding it was not in fact a corporation having a Charter from the State of Illinois and was not created and existing by virtue of the Laws of Illinois; and also notwithstanding no petition had been filed nor any order made pronouncing Chicago Lloyds legally dissolved, in conformity with Section

196 (Illinois Insurance Code), nevertheless the legal effect of vesting title to the assets and property of said Chicago Lloyds in said Statutory Liquidator, on February 9th, 1938, was to abate any and all actions pending against Chicago Lloyds in Sister-States and completely dissolve said unincorporated association of individuals as an entity; and said appellee further contended that the judgment rendered against said association, Chicago Lloyds, in the sister-state of Missouri, subsequent to February 9th, 1938, was therefore void and not entitled to the benefit of the full-faith-and-credit clause of the Constitution of the United States, and that such an effect, so given to said Sections 191, 193 and 196, would not constitute a violation of any of appellant's constitutional rights.

Appellant filed in said Supreme Court his Reply Brief (T. 103), met said new contentions and raised all the constitutional questions which are here raised in this Court (T. 67-71, incl.) and orally presented said contentions in vain.

The parties admit and the Court found that Chicago Lloyds is an unincorporated association of individuals (T. 73).

Section 196 of the said Illinois Insurance Code provides:

> "If the company against whom the petition for liquidation is filed be a corporation and a petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company after service of an order to show cause, as aforesaid, and a full hearing, to enter a decree dissolving such company."

No order of dissolution was requested or entered. However, both the Liquidator and the Illinois courts treated Chicago Lloyds as though it were a corporation. That such

was the holding of the Supreme Court of Illinois is shown by the following language of the opinion (T. 76-77):

> "But since insurance companies are excluded from the operation of the National Bankruptcy Act, and one of the objects of the Illinois act liquidating insolvent insurance companies is to secure ratable distribution of its assets, we see no reason why the statute vesting a liquidator with title, should not receive the same construction as the Bankruptcy Act, which on adjudication of the bankrupt places title to all of the bankrupt's property, with actual or constructive possession, in a trustee, without regard to his location or place of adjudication. • • •
>
> "In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois Statute for the liquidation of insolvent insurance companies. • • •
>
> "If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds."

The opinion further held (T. 85) that this case comes within the class where the holder of a foreign judgment, who is given no special rights against an insolvent corporation, may not, because of the judgment alone, impose a different method of distribution of its assets than the Court administering the insolvent estate (T. 85).

Furthermore, the Supreme Court of Illinois holds that

the Appellant was bound under the full-faith-and-credit clause to recognize the effect of the Illinois Decree (T. 84), and that "any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree."

The Illinois Supreme Court holds that the cases cited by appellant, to support his position, would be controlling only in the event of a surplus in the hands of the Liquidator after the payment of all other claims (T. 84).

STATEMENT OF CASE.

This case came to the Supreme Court of Illinois, the Court of last resort in said State, on a direct appeal to it from the Superior Court of Cook County, Illinois, for the reason that it presented questions under the full faith and credit clause of the federal Constitution. The Supreme Court of Illinois said (T. 72):

> "The controversy in this case arises out of the disallowance of a claim of Charles B. Morris, appellant, by the Director of Insurance of Illinois, the liquidator of Chicago Lloyds, hereinafter referred to as 'liquidator,' appointed by the decree of the Superior Court of Cook County upon the petition of the Director of Insurance and the Attorney General of the State of Illinois.
>
> "As finally amended appellant's claim consists of a judgment rendered in the circuit court of the city of St. Louis, Missouri, against Chicago Lloyds, three years after the liquidator of Chicago Lloyds had been confirmed by the decree of the Superior Court. The claimant contended the full-faith-and-credit clause of the constitution of the United States (art. IV, sec. 1) and the acts of Congress enacted pursuant thereto, required that such judgment be recognized in the Illinois liquidation proceeding and allowed as a claim against the assets of Chicago Lloyds for the full amount of such judgment * * *.

(T. 73):

> "The question here presented, as set out in the report of the master, is as follows: 'Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign

court after such appointment?' This presents a new application of the full-faith-and-credit clause, which is still debatable, or at least questionable, and therefore is subject to review by this court on direct appeal from the superior court of Cook county. * * * Incidentally the question is also in the case under such clause of the constitution as to what effect the prior decree of the Illinois court, appointing a liquidator for Chicago Lloyds, has upon a subsequent judgment rendered in another State seeking satisfaction from the same assets. These questions, as presented, we believe have never been decided by the United States Supreme Court as the final arbitrator of such questions arising under the full-faith-and-credit clause."

The facts are as follows (T. 29-31): Appellant, Charles B. Morris, is, and at all times herein stated was, a citizen of Missouri, and for more than twenty years prior to 1929 was engaged in the insurance business in that State, acting as agent for a large number of insurance companies and writing policies of insurance. In 1929 he was duly appointed sub-agent to write insurance in the State of Missouri for Chicago Lloyds, an unincorporated association composed of more than three hundred members, residing in various States of the Union. The members of Chicago Lloyds became associated for the purpose of conducting an insurance business not only in the State of Illinois but also in several of the states of the Union. Each member executed a power-of-attorney in accordance with the form set out in the record (T. 35). A license or certificate of authority to transact business in Illinois, under an approved Lloyds Plan, was issued to Chicago Lloyds by the State of Illinois, pursuant to the provisions of said Illinois Insurance Code, Secs. 699, 703, 704, 705, 706, 708, good for the term of one year and which required renewal from year to year. A statute of Illinois provides that such an association could sue or be sued under the name it had adopted (Sec. 717 and said Illi-

nois Ins. Code). Chicago Lloyds also applied for and was granted a license to transact business in Missouri (T. 38, Claimant's Ex. 5). Under the laws of that State it could also sue or be sued under the name it had adopted, the statutes providing that service of process upon an unincorporated association should be by personal service upon the agent and the attorney-in-fact, Associated Underwriters, Inc. (Secs. 728-729, R. S. Mo. 1929), or by serving the Superintendent of Insurance of the State of Missouri (Sec. 5894, R. S. Mo. 1929), and further providing that such service upon said Superintendent "shall be valid and binding, and be deemed personal service upon such company, so long as it shall have any policies or liabilities outstanding in this state, although such company may have withdrawn, been excluded from, or ceased to do business in this state."

In October, 1932, after appellant had acted as sub-agent for Chicago Lloyds for about three years, a dispute arose between them concerning an alleged indebtedness from appellant to Chicago Lloyds. Appellant was arrested on four separate occasions and confined in jail for a total of twelve days and nights, on a false and malicious charge of embezzlement made by Chicago Lloyds and its attorney-in-fact, Associated Underwriters, Inc., with the consequent effect of completely destroying his established insurance business and reputation, and causing him great financial loss, expense and humiliation. He was required to stand trial, and at the close of the evidence adduced against him, the jury was directed to acquit him (T. 32).

On August 24, 1934, while said Chicago Lloyds was still transacting business in Missouri, appellant filed a suit against Chicago Lloyds and its attorney-in-fact, Associated Underwriters, Inc., in the Circuit Court of the City of St. Louis, claiming damages in the amount of $100,000 for said false arrest and malicious prosecution. That

Court is a court of general jurisdiction. Personal service of process upon said defendants was obtained. The cause was removed to the Federal Court (T. 34), where pleas to the jurisdiction and answers to the merits were filed (T. 34). Thereafter the cause was remanded to the State Court where the cause was at issue and awaiting trial in said court, when on February 9, 1938, a petition was filed in the Superior Court of Cook County, on relation of the Director of Insurance of the State of Illinois, praying that Chicago Lloyds show cause why an order should not be entered finding that sufficient cause existed for the liquidation of Chicago Lloyds and directing the Director to take possession of its property, business and affairs and to liquidate the same in accordance with the provisions of the Illinois Insurance Code (T. 1). A consent by Chicago Lloyds to the entry of an order of liquidation and to the liquidation of Chicago Lloyds by the Director was filed (T. 3), and on the same day the Court entered an order or decree adjudging that sufficient cause existed for the liquidation of Chicago Lloyds and ordering that the Director take possession of the property and liquidate the same, in accordance with Article XIII of the Illinois Insurance Code (T. 3-4). The Superior Court of Cook County, Illinois, in and by its said decree sustaining the allegations of the petition filed February 9, 1938, stated (T. 4): "The court makes findings of fact, finding each of the facts alleged in the petition." Among the facts so alleged being the following (T. 2):

> "Respondent is insolvent. Its total admitted assets aggregate not to exceed $1,507,700.07 and its total liabilities aggregate in excess of $1,203,512.17, leaving a surplus to policy holders of only $304,187.90, whereas Section 99 of the Illinois Insurance Code, under which respondent has been operating since July 1, 1937, required it to keep and maintain in Illinois admitted assets, including the deposits of underwriters required

by Section 97 of said Code, exceeding all outstanding claims and other liabilities plus the earned premium (less reinsurance premiums and less the commissions actually paid on policies written prior to the effective date of said Code) on policies in force, of not less than $500,000.00" (T. 2).

At the time this order was entered, Chicago Lloyds was the only respondent. Thereafter, on June 24, 1938, a petition to join the members of Chicago Lloyds, the attorney-in-fact, the Trustee of securities, and unknown owners as parties respondent, was filed (T. 5) and an order joining them as respondents was entered (T. 6).

On February 15, 1938, an order requiring claims to be presented to the Director on or before November 15, 1938, was entered (T. 5). The director notified appellant by mail in St. Louis, Missouri, to present his verified proof of claim on or before November 15, 1938, stating that he had been directed to take possession of, and liquidate the property of Chicago Lloyds (T. 16, 20). On September 21, 1938, in response to said notice, appellant mailed his verified claim to the Director based upon the suit then pending in the Circuit Court of the City of St. Louis, Missouri (T. 16, 42, Liq. Ex. 2), and attached thereto a copy of the petition or complaint filed therein, stating that said suit was awaiting trial in the Circuit Court of the City of St. Louis, and that when judgment thereon was obtained, he would file a supplemental and amended claim (T. 16).

On March 17, 1941, said suit was set for trial in said Circuit Court of the City of St. Louis, and the parties, by their respective counsel, appeared. Thereupon, the attorney for Chicago Lloyds notified the Court that he was withdrawing on instructions from the Director. The trial proceeded. A jury was waived and the cause was submitted to the Court on the complaint of appellant, the

answers of Chicago Lloyds and Associated Underwriters, Inc., and on the evidence adduced. The Court took the case under advisement, and directed his clerk to write a letter to the Director (T. 16), notifying him that, on the day of the trial, counsel for Chicago Lloyds had withdrawn, and that the cause was under submission, and requesting his reaction thereto. The Director's attorney answered said letter on March 26th (T. 16), stating that the attorney for Chicago Lloyds had withdrawn on instructions, that Chicago Lloyds was being liquidated in the proceeding pending in the Superior Court of Cook County, Illinois, that it was the Director's position that the appellant was enjoined from obtaining or attempting to obtain preferences, judgments, attachments, or other like liens, until the further order of the Court (T. 43); and that liquidation proceedings in Illinois being an action in rem is analogous to a bankrupt proceeding, and that while the injunction order is good without notice and without service of process upon a violator of same, and does not prevent the Court from entering judgment, they believe that plaintiff, by asking the Court to proceed to judgment against Chicago Lloyds, is in direct violation of the injunction, and should he bring such judgment into Illinois and attempt to enforce it here, he will be violating the injunction order (Tr. 43, Liq. Ex. 3).

On April 17, 1945, said Circuit Court of the City of St. Louis entered a joint and several judgment in favor of the appellant and against Chicago Lloyds and Associated Underwriters for $50,000 and costs, and ordered that an execution issue thereon (T. 35, Claimant's Ex. 2).

On August 2, 1941, appellant filed with the Director his supplemental and amended claim for $50,000 based on said Missouri judgment and attached thereto a duly authenticated copy of said judgment and of said judgment roll (T. 17).

On June 10, 1942, the Director, without notice to the ap-

pellant and without any hearing upon said claim based upon the Missouri Judgment, filed a report on claim in said Superior Court of Cook County recommending the disallowance thereof (T. 7).

Appellant filed exceptions (T. 7-12) claiming therein that there had been no hearing before the Director upon the claim, and that the said recommendation of disallowance was entirely "ex parte"; that the claim and amended claim were properly filed; that the Director had given an improper and unlawful extra-territorial effect to the injunctive order, and failed to find, or state, or make known to the Court in his recommendation that claimant is and was a non-resident of Illinois, and a citizen of St. Louis, Missouri, and had instituted a suit against Chicago Lloyds in the year 1932, long prior to the entry of the decree directing liquidation, and that the said suit was pending and was being defended by Chicago Lloyds in the Circuit Court of St. Louis, Missouri, on February 9, 1938, when the order directing liquidation was entered; that the Director had failed to give the judgment of the Circuit Court of the City of St. Louis, State of Missouri, the full faith and credit to which it is entitled under the provisions of Article IV, Section 1 of the Constitution of the United States; that claimant had been denied as a citizen of the State of Missouri the privileges and immunities of citizens of the State of Illinois, as guaranteed by Article IV, Sec. 2, of the Constitution of the United States; that the Illinois Court had no right to enforce any law of the State of Illinois which abridged the privileges of the claimant as a citizen of Missouri and of the United States, or to deny to him as such citizen of Missouri the equal protection of the laws as guaranteed by Section 1 of the Fourteenth Amendment to the said Constitution; and that he was entitled to the benefit and protection of the Sixth Article of the Constitution of the United States, to the end that his claim may be adjudicated according to the provisions

of the Constitution of the United States and the laws of the United States made under and pursuant thereof (T.12).

Thereafter said Superior Court of Cook County referred the matter to a Master in Chancery to hear and consider said objections and exceptions (T. 12). The appellant offered in evidence before the Master the judgment and judgment roll of the Circuit Court of the City of St. Louis in favor of the claimant and against Chicago Lloyds for the sum of $50,000 (T. 29 et seq., Claimant's Ex. 2). He also offered in evidence a certified copy of the appointment of the Superintendent of Insurance of Missouri to receive service of process for Chicago Lloyds (Claimant's Ex. 3, T. 37); also the said letter from the Clerk of the St. Louis Circuit Court to the Director written at the request of the Judge who tried the case (T. 38, Claimant's Ex. 4) and other documentary evidence.

No evidence was offered by the Director which tended to show that the appellant was a party to said liquidation proceeding in which the order directing liquidation of Chicago Lloyds was entered on February 9, 1938; or that he was ever served with notice of said injunctive order (T. 24), or that he had ever been cited or found guilty of contempt of said order. The evidence offered by the Director was the notice to appellant to file his claim within the time fixed by the Court (T. 41, Liq. Ex. 1; T. 49-50), the original claim filed by appellant in response to said notice; the amended claim filed on August 2, 1941 (T. 17), and the said letter sent by the attorneys for the Director explaining the withdrawal of the Director's attorneys (T. 43, Liq. Ex. 3).

The Master found that, on February 9, 1938, the petition, praying for an order finding that sufficient cause existed for the liquidation of Chicago Lloyds, was filed (T. 15); that Chicago Lloyds consented to the entry of such an order and consented to the liquidation of Chicago Lloyds

by the Director of Insurance; that a decree was entered on February 9, 1938, directing the liquidation of Chicago Lloyds in accordance with the Illinois Insurance Code (T. 15); that this decree contained an injunctive order, a portion of which the Master incorporated into his report (T. 15), which order, among other things, "restrained all persons from in any manner interfering with the possession of said Director of Insurance in or to the books, records or property of Chicago Lloyds, or with the liquidation of its business, until the further order of the Court * * *; or from obtaining or attempting to obtain preferences, judgments, attachments or other like liens, and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in possession and control of the relator" (T. 15).

At no time has appellant ever asked for any preference, priority, lien, or any position of advantage. He asks only the right to share **pro rata** with the other general creditors in due course of administration.

There is no finding by the Master that appellant was ever served with a copy of the injunction, or that he had any notice thereof. It was stipulated that the appellant had received the notice to file a claim with the Director (T. 24). (This notice [T. 60-61] contains no reference to any injunctive order.) There was no stipulation that appellant had notice or knowledge of the injunction order. No evidence which could support a finding that appellant had notice or knowledge of the injunction was introduced. Counsel for the Director specifically reserved the right to produce evidence on that (T. 24), but produced none.

The facts, as summarized by the Master, from the evidence submitted, which was wholly documentary, and his conclusions of law are set out in the Transcript at pages 12 to 19.

The Master stated "that there is no dispute on any ma-

terial fact in the matter involved in this reference, and the only question involved is the question of law" (T. 18):

> "Had the liquidator of an insurance company, organized and doing business under the laws of Illinois, or the Court appointing him, the right to pass upon the merits or the amount of a claim, arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment."

The Master recommended that "the recommendation of liquidator that the claim be disallowed should be sustained and that claimant's objections to said recommendation be overruled and denied, unless claimant desires to establish his claim by other evidence under the direction of this court in this proceeding" (T. 19). [Note: The Statute of Limitations (two years) would then have run against the original cause of action if it had to be presented de novo. Sec. 1016, R. S. Mo. 1939 (Sec. 864, R. S. Mo. 1929). Sec. 15, Chap. 83, R. S. Ill. 1937.]

Objections (which by order of said Superior Court stood as exceptions) were filed by appellant to the Master's Report (T. 24-28). Appellant excepted and objected to said report for the reason that the Master failed to give full faith and credit to said Missouri judgment, in violation of Section 1 of Article IV of the Constitution of the United States, and for the further reason that to refuse to accord full faith and credit to said judgment is to deny appellant his rights under Section 2 of Article IV of the United States Constitution, and is a violation of Section 1 of Amendment XIV to the United States Constitution (T. 28).

The case was thereupon argued before the Superior Court of Cook County upon said exceptions. On September 28, 1944, that court entered an order confirming the Master's Report, in which it found: "That the findings of the said Master in Chancery are proper, true and correct,

and that the objections to the Master's report filed by the claimant * * * were properly overruled by the Master." "That the judgment in favor of Charles B. Morris in Case No. 206,424 in the Circuit Court of the City of St. Louis, Missouri, has no force or binding effect upon Liquidator, and should not be considered in this liquidation proceedings." "That Morris has wholly failed and refused to proceed or to offer proof or evidence before the Court or the Master, other than the transcript of judgment entered in said case No. 206,424, and the other evidence introduced by claimant, as shown by the transcript of testimony filed with the Master's report, with respect to the liability or amount of damages of claimant against Chicago Lloyds" (T. 44).

The Court ordered, adjudged and decreed: "1. That the exceptions of claimant to said Master's report are overruled and said report in all respects approved and confirmed. * * * 3. That said claim of Charles B. Morris is denied and disallowed; that his objections to the Liquidator's Tenth Report on Claims and his recommendation that said claim be disallowed are overruled, and said report on claims and the recommendation of disallowance of said claim is approved and confirmed, and said claim disallowed in accordance with the recommendations contained in the Master's Report" (T. 45).

The appellant prosecuted an appeal to the Supreme Court of Illinois (T. 46). Appellant filed a brief in said Supreme Court and therein (T. 47-49) assigned the several errors relied upon for reversal as required by the Civil Practice Act of Illinois and Rule 39 of said Supreme Court. Appellant therein specifically contended that the interpretation, construction, application and effect given to Section 189 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Par. 801), upon the strength of which the Superior Court had given extra-territorial effect to the injunctive order entered February 9, 1938, is unconstitutional, be-

cause there is and was no finding by the Master and no evidence whatever in the record that appellant had been a party to said liquidation proceeding; or had been served with said injunctive order; or had any notice or knowledge thereof; or that the prosecution of the action in the Missouri Court would constitute a violation thereof, and contending further in the errors relied on in the Supreme Court of Illinois that the Superior Court erred in failing to hold that the Missouri judgment was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States and the Act of Congress enacted May 26, 1790, and under the decisions of the Supreme Court of the United States, and in failing to hold that Section 189 of the Illinois Insurance Code, which the Superior Court had construed as warranting the entering of an injunction against a person not a party to the proceeding and not served with process or notice, and over whom the court below had no jurisdiction, was a denial of his constitutional rights under Section 1 of Amendment XIV of the Federal Constitution; that it abridged the privileges and immunities guaranteed to appellant under Section 2 of Article IV of the said Constitution, by denying to appellant the right to bring suit on the Missouri judgment, and that it was a denial to him of the equal protection of the laws guaranteed to him under Section 1 of Article XIV of the Federal Constitution.

In answer to said brief, the Director filed a brief wherein for the first time, in addition to Section 189 (the injunction statute), he contended that full faith and credit should be refused because the liquidation proceeding was conducted according to the Illinois Insurance Code—that is, because it was "statutory"— and contended that said Section 189 in connection with Section 191 (Title to Property of Company), Section 193 (Duties of Director of Liquidation), and 196 (Order of Dissolution) (all set out in the appendix), when legally interpreted, construed, applied and given effect, justified the judgment.

The Director also contended that, notwithstanding Chicago Lloyds was an unincorporated association, transacting business in several states, and not a corporation of Illinois, and notwithstanding no petition was filed praying a dissolution of Chicago Lloyds, or any order made pronouncing Chicago Lloyds "dissolved," in conformity with Section 196, that the legal effect of the order directing liquidation of Chicago Lloyds and of the vesting of title to its assets in the Director, was to abate any and all actions pending against said Chicago Lloyds in sister States and to completely dissolve said unincorporated association of individuals as an entity (T. 62-67).

The Director further contended that that judgment rendered against said Assocation, Chicago Lloyds, in a sister State, subsequent to February 9, 1938, was therefore void and not entitled to full faith and credit, and that such an effect given to said Sections 189, 191, 193 and 196 would not constitute a violation of any of appellant's constitutional rights.

The Director further contended that the license to conduct business, issued by the Director of Insurance annually, expired on June 30th, 1938, and that Chicago Lloyds ceased to exist when its license expired and a judgment subsequently taken against it was void. The Director further contended that, after its license to do business expired, actions against it abated. That all parties, whether policyholders or creditors, dealing with an Illinois created insurance corporation, are presumed to know its charter provisions and the statutory law governing its liquidation.

The Director further contended that the Laws of Illinois, governing the liquidation of insurance companies and judicial proceedings thereunder, are entitled to full faith and credit in the courts of sister States, notwithstanding the answer of Chicago Lloyds did not plead as a defense the laws of Illinois, nor did it plead that a decree had been entered in the liquidation proceeding.

The Director further contended that under the decisions of Missouri the judgment obtained in St. Louis was not provable against the Director; and that the judgment was subject to collateral attack.

Thereafter appellant met the Director's new contentions in a Reply Brief (T. 67-71, incl.), wherein Appellant pointed out the distinction between a corporation having a charter, and an unincorporated association, not created by the State, pointing out that Chicago Lloyds had received no charter from the State of Illinois; that Chicago Lloyds was formed by the act of its members, many of whom are residents of states other than Illinois (Claimant's Exs. 15 and 16, T. 41). Appellant specifically pointed out that Chicago Lloyds had no Charter into which Section 191 of the Illinois Insurance Code could be read (T. 68), and therefore said section was not applicable to an unincorporated association.

Appellant further pointed out in his Reply Brief that the new contentions of the Director of Insurance was not against the provability of the judgment but against its validity, and argued that the courts of one state could not be ousted of their jurisdiction by the legislature of another state (T. 70).

It was further argued that Chicago Lloyds continued to remain capable of being sued despite the entry of the order that the Director take possession of and liquidate the property, and that a judgment rendered after the entry of such an order is not void; that Chicago Lloyds continued to remain capable of being sued even if the license to do business was not renewed in Illinois, and that Illinois was required to give full faith and credit to the Missouri judgment. It was further argued that Illinois did not have exclusive jurisdiction to adjudicate claims; that competent courts of sister states could also adjudicate claims where the company is an association which has not been dissolved, and that this would be true

even if the Director of Insurance became vested with title to all the property of Chicago Lloyds wherever located (T. 67-71).

The Supreme Court affirmed the judgment of the Superior Court of Cook County (T. 86) and in and by its opinion discloses clearly that it adopted the contentions of the Director; and by so interpreting, construing, applying and giving effect to said sections of the Illinois law, it wrote an opinion in which it justified the violation of appellant's said constitutional rights by filing and entering its said opinion September 19, 1945 (T. 72-86, Inc.).

The Supreme Court of Illinois, in its opinion, finds that in disposing of the issues presented it is necessary to examine the status, rights and title of the liquidator of the insolvent insurance company under the laws of Illinois (Article XIII of Ill. Rev. Stat. 1943, chap. 73, pars. 799 et seq.). The Court sets out briefly the substance of the statutes involved as follows:

> "Section 188 of the Insurance Code (Ill. Rev. Stat. 1943, chap. 73, par. 800), specifies the grounds upon which the Director of Insurance and the Attorney General may petition a circuit or superior court for an order to show cause why an insurance company should not be liquidated. Section 189 (Par. 801) of the Insurance Code provides the court may issue an injunction to protect the assets of such insolvent company. Section 190 (Par. 802) provides, upon full hearing, the court may enter an order either to dismiss the proceeding, or find cause exists, and order the Director of Insurance to take possession of the property, business, assets, and affairs of said insolvent insurance company, and liquidate them according to law. Section 191 (Par. 803) provides that the Director, as liquidator, is vested by law with title to the property, contracts and rights of such insolvent insurance company, as of the date of the order entered by the court. Section 193 (Par. 805) fixes the duties

of the liquidator. Section 194 (Par. 806) provides that creditors, except those holding contingent claims, shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. Section 208 (Par. 820) directs the manner of fixing the time to file claims, after an order has been entered declaring the company insolvent" (T. 75).

The Illinois Supreme Court found that there were two questions involved (T. 73): (1) Whether the liquidator in question had the right to pass upon the merits or the amount of a claim arising out of a suit instituted in another forum before the appointment of the liquidator and consummated by a judgment of such foreign court after such appointment. (2) The effect the prior decree of the Illinois Court, appointing the liquidator for Chicago Lloyds, has upon a subsequent judgment, rendered in another state in a suit pending prior to the appointment of such liquidator. The Court found that neither of these questions had ever been decided by the United States Supreme Court as the final arbiter of such questions arising under the full-faith-and-credit clause (T. 73).

Thereafter, and within the time provided by the Rules of said Supreme Court, appellant filed a petition for rehearing (T. 87-91, Inc.), wherein he specifically directed the attention of the Court to said erroneous interpretation, application and effect that it had given to said Illinois statutes and that by such effect appellant's said constitutional rights had been disregarded and denied (T. 87), which said Petition for Rehearing was overruled and denied on the 19th day of November, 1945 (T. 91-92). Said original opinion was modified in certain respects by order of the court, as disclosed in appellant's printed Statement as to Jurisdiction (pp. 43-44 thereof).

This record discloses that no distribution of assets of said Chicago Lloyds had been made when said Missouri judgment was filed with the Director on August 2, 1941;

and that said Director filed his Tenth Report on Claims on June 10, 1942 (T. 7), and that claims were being tried and approved and disapproved, and the matter of whether or not all claims against said Chicago Lloyds that had been filed "on or before November 15, 1938," could be paid in full, or only pro rata had not been determined, when said Liquidator recommended the disallowance of appellant's claim.

No further steps can be taken in any Illinois court, and appellant's only remedy lies in an appeal to the Supreme Court of the United States from the said final judgment.

SPECIFICATIONS OF ERRORS.

(T. 110.)

I.

The Supreme Court of Illinois erred in that it has so interpreted, construed, applied and given effect to Sections 187, 188, 189, 190, 191, 193, 194, 196 and 208 of Chapter 73 of the Revised Statutes of Illinois 1937 (referred to in said opinion as Article XIII of the Illinois Insurance Code) in sustaining their validity, as to constitute said laws repugnant to and violative of appellant's constitutional rights, secured to him as a citizen of Missouri and of the United States by Article IV, Sections 1 and 2, Article VI, and Section 1 of the Fourteenth Amendment to the Constitution of the United States, as hereinafter separately and specifically enumerated, which errors were called to the attention of said Court by appellant in his original brief, his reply brief, and his petition for a rehearing filed in said court (T. 47, 67-71, 87-91).

(Assignment of Error I, T. 110.)

II.

The Illinois Supreme Court erred in denying full faith and credit, or any credit whatsoever, to appellant's Missouri judgment. As justification for its decision, it so interpreted, construed, applied and gave such an effect to said Sections 187, 188 and 189 as to render said sections repugnant to the said provisions of the United States Constitution and as to authorize the court of the State of Illinois to enter an injunctive order in the proceeding brought in the State of Illinois under said laws against Chicago Lloyds that was binding on appellant, a citizen of Missouri, without service or notice.

Said Section 189 provides that an injunction may be issued when deemed necessary to prevent interference with the proceedings or with the Director's possession or control or title, rights or interests, or to prevent interference with the conduct of the business by the Director, or that may be deemed necessary to prevent waste of assets, or the obtaining of preferences, judgments, attachments, or other like liens, or the making of any levy against such company or its property and assets while in the possession and control of the Director.

The Court held that the injunction so made and entered by said Illinois Court, pursuant to said Statute, was binding upon the appellant herein, and entitled to be given extra-territorial effect and enforcement, and to restrain appellant from continuing to prosecute a tort action filed in the State of Missouri in the year 1934 (four years prior to said Liquidation proceedings) in a Court of Missouri which had general jurisdiction and jurisdiction of the subject matter and in which cause personal service was had upon said "Chicago Lloyds," and which case was at issue and awaiting trial in Missouri at the date of the said injunctive order, notwithstanding appellant was not brought before said Illinois Court when said injunctive order was entered, and was not served with process in said proceeding, and had no notice whatever of said order, and against whom no citation for contempt of said order was ever applied for or issued by said Court, and no order entered therein finding him guilty of contempt of said order; and notwithstanding, in addition, that appellant's claim was not based upon any contractual relationship to said unincorporated association of individuals, Chicago Lloyds, whatsoever, but was based upon a tort, committed against him in the State of Missouri in 1932, for which he was there in said State of Missouri seeking redress.

Said Supreme Court of Illinois erroneously held that said injunction was violated by continuing to prosecute

said tort action to judgment subsequent to the entry of such an injunctive order; and for that reason, that by so violating said injunctive order, and as a penalty therefor, the Courts of Illinois are not required to give full faith and credit to said judgment.

(Assignment of Error II, T. 111-112.)

III.

The Illinois Supreme Court erred in denying full faith and credit, or any credit whatever, to appellant's said Missouri judgment holding that Section 191 of said Illinois law vested title in said Illinois Liquidator.

Said Court gave to said Section 191 the meaning that the court of the liquidator had exclusive jurisdiction to liquidate claims and therefore was not required to give full faith and credit to sister-state judgments. Said Supreme Court erroneously held that all actions (whether for tort or on contracts) pending in sister States, were by said "vesting of title" abated; and from and after such "vesting of title in said statutory Liquidator," the legal existence of said unincorporated association of individuals was dissolved and terminated; and that all judgments entered in sister States subsequent to said date of vesting of title (February 9, 1938) were void, and were entitled to be completely disregarded, and denied any protection or faith and credit as provided by said Article IV of the Constitution of the United States; or as provided by Sec. 1 of the said Fourteenth Amendment to the said Constitution; said Court erroneously deciding that such an interpretation and application of a law of the State of Illinois is valid, and is not repugnant to or violative of said Article VI of the Constitution of the United States.

(Assignment of Error III, T. 112-113.)

IV.

The Illinois Supreme Court erred in violating Section 1 of Article IV of the United States Constitution requiring full faith and credit to be given to the said Missouri judgment, by improperly interpreting, construing and giving effect to Sections 194 and 208 of the said Illinois Insurance Code and by its interpretation held them valid and not repugnant to appellant's said constitutional rights.

Said Section 194 provides that the rights and liabilities of the domestic company and of its creditors, except those holding contingent claims * * * shall, unless otherwise ordered by the Court be fixed as of the date of the entry of the order directing liquidation; and said Section 208 provides also that the Liquidator shall notify all persons who may have claims against said domestic company * * * and who have not filed proper proofs thereof, to present the same to him at the place specified in such notice within such time as may be fixed by the order of the Court; and that the last day for the filing of such proofs of claims being thereby required to be specified in the notice; and the said Section 208 further provides that said notice shall be given in a manner determined by the Court; and clause 2 of said Section 208 expressly provides that proofs of claim on good cause shown may be filed subsequent to the day specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

Said Court in construing the said mentioned Sections 194 and 208 of the said Illinois Insurance Code as valid, erroneously decided that although appellant on the 21st day of September, 1938, filed with the said Liquidator within the time fixed by the Court (November 15, 1938) his said verified claim, and attached thereto a copy of said petition for damages, which petition was then pending in the Circuit Court of the City of St. Louis, and ap-

pellant further stated in said verified claim that he would file a supplemental and amended claim when judgment had been obtained in said Missouri Court, that nevertheless, since appellant had not filed with said Liquidator his amended claim, to-wit, the **final judgment** rendered in said Missouri Court April 7, 1941, until August 2, 1941—(and therefore three years after November 15, 1938, the date fixed by said Court under said sections of the laws of the State of Illinois), for **that** further reason, said Supreme Court erroneously held that said final judgment was not entitled to full faith and credit, and that to permit it to be allowed as a claim and to participate in the distribution of the assets of said judgment debtor, would violate the provisions of said Illinois laws. Thereby, said Court not only applied an Illinois Statute that by such an interpretation it held was valid, but also held that it was not repugnant to, and would not and did not violate said Article VI of the Constitution of the United States and the provisions of said Article IV, requiring that said judgment be given full faith and credit; and in addition, actually misinterpreted and misapplied said Illinois law itself.

Said law expressly provides, under clause 2 of said Section 208, that proofs of claim, on good cause shown, may be filed **subsequent** to the date specified, but that no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full.

Thereby, even if said sections of said Illinois law, so held to be valid and not repugnant to nor violative of said constitutional rights secured to appellant under said Article IV, it has been thus so erroneously applied by said decision, as to be repugnant to and to violate the said Fourteenth Amendment—in that, said Supreme Court has by its decision and interpretation of said law violated and disregarded appellant's constitutional rights secured to him by section 2 of Article IV; in that by such an inter-

pretation and application sustaining the validity of the law of Illinois as not repugnant to appellant's rights as a citizen of Missouri and of the United States, it has abridged his privileges and immunities as a citizen of Missouri, viz.: (to have his claim recognized and allowed as provided by said clause 2 of said Section 208, "subject to all allowed claims, proofs of which had been filed before said filing date, November 15, 1938"). That in addition said interpretation, application and effect given said law is repugnant to and violative of Section 1 of the Fourteenth Amendment to the Constitution, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the law.

(Assignment of Error IV, T. 113-114.)

SUMMARY OF ARGUMENT.

A.

Full Faith and Credit Must Be Given to the Missouri Judgment.

I. Section 1 of Article IV of the Constitution of the United States requires that full faith and credit be given by the State of Illinois to the Missouri judgments for money, based upon civil cause of action. Pursuant to this section Congress enacted the law of May 20, 1790, requiring that such Judgments shall have such faith and credit in every court within the United States as they have by the law or usage in the courts of the states from which they are taken.

II. The decisions of this Court require that full faith and credit be given to such judgments. This Court has said that it is aware of no exception to the full-faith-and-credit rule in respect of such money judgments. This Court has required the Courts of the several states to give full faith and credit to judgments of sister States in cases factually analogous to this one.

III. The principal purpose of the clause is to give nationwide application to rights judicially established in each state. That appellant has a right to receive the amount of the judgment from Chicago Lloyds has been judicially established by the in personam judgment rendered in Misssouri.

B.

The Injunctive Order Entered Under the Provisions of Section 189 of the Illinois Insurance (Art. XIII) Code (Par. 801) by the Superior Court of Cook County, Illinois, Was Not Binding on Appellant in Missouri.

The Injunctive Order in the Illinois Decree, entered pursuant to Section 189 of the Illinois Insurance Code, was not binding upon appellant, because:

I. He was not a party to said proceeding or in privity with or in any contractual relation to the parties to said suit;

II. That he had no actual or constructive notice of said injunctive order, and was neither served with said order nor cited for contempt thereof;

III. That to continue to prosecute his Missouri Court action to final judgment in Missouri, as a matter of fact would not, could not, and did not violate said injunctive order, since such action did not interfere with the possession or control of the assets in the possession of the statutory Liquidator;

IV. That said injunctive order had and could have no extraterritorial effect beyond the boundaries of Illinois; and therefore to hold that it had such effect and was binding upon appellant was equivalent to arbitrarily assessing as a penalty the denial of appellant's right to full faith and credit on his Missouri judgment, and was violative of appellant's constitutional rights under Article IV, Sections 1 and 2 and Article VI, and also Section 1 of the Fourteenth Amendment to the Constitution;

V. That all such contentions were raised and asserted by appellant at the earliest opportunity in the proceed-

ings, both in the lower courts and in the Supreme Court of Illinois, and passed upon adversely to appellant, as disclosed by the record.

C.

The Decree of Liquidation of February 9, 1938, and the Possession of the Assets by the Director of Insurance, Pursuant to Section 191 of the Illinois Insurance Code (Title to Property), Did Not Abate Appellant's Suit Then Pending in Missouri, Where the Court Had Jurisdiction of the Parties and of the Subject-Matter and Where Chicago Lloyds Had Pleaded to the Merits; Nor Can Section 191 Be Given the Same Construction as the National Bankruptcy Act, as Was Done by the Illinois Supreme Court in the Case at Bar.

I. Chicago Lloyds was an unincorporated association of individuals doing an insurance business under the name "Chicago Lloyds," pursuant to a written contract or power of attorney executed by each member, authorizing an attorney-in-fact, Associated Underwriters, Inc. (T. 35-37), to transact the business of the association in several states, including Illinois and Missouri. A yearly license was granted to the Association in both states. In Missouri, they transacted business pursuant to the provisions of Sections 5892-5893-5894 (R. S. Mo. 1929). The Association could be sued in Missouri under that name, service could be had upon the Association, either upon the agent, pursuant to Sec. 728 (R. S. Mo. 1929) or by service upon the Superintendent of Insurance of Missouri, pursuant to Sec. 5894 (R. S. Mo. 1929), the latter providing that service upon the said Superintendent shall be valid and be deemed personal service upon the Insurance Company so long as it shall have any policies or liabilities outstanding in the State of Missouri, even though it may have been withdrawn, been excluded from, or ceased to do busi-

ness in Missouri. Chicago Lloyds was served through its agent and also through the said Superintendent of Insurance. It also answered to the merits in the said tort action in Missouri, where the court had jurisdiction of the subject matter and of the parties, and where the case was at issue when on February 9, 1938, the liquidation petition was filed in the Superior Court of Cook County, Illinois.

II. Chicago Lloyds was not a state-created artificial body, or incorporated company having a charter and existing by virtue of the laws of Illinois, which could be dissolved under the provisions of its laws. On the contrary, Chicago Lloyds was a voluntary association of individuals unincorporated and in the nature of a partnership or joint adventure, and was merely licensed to transact their insurance business in the State of Illinois under a yearly license, which under the Illinois law had to be renewed yearly. Therefore, the legal effect of the said liquidation proceedings, pursuant to the said Illinois Insurance Code, and the decree of the Superior Court of Cook County, Illinois, pursnant thereto, directing the Insurance Director to take title to and possession of their assets as statutory liquidator, and to liquidate them, and the legal effect of Section 191 of the said Illinois Insurance Code vesting title to the assets in the said Director was not to "dissolve, destroy, terminate the existence of, and render dead this association," as might be the effect of a dissolution decree upon an Illinois-created Corporation and to abate the said suit pending in Missouri. Chicago Lloyds remained suable in Missouri and was not dissolved. Chicago Lloyds was not in the position of an insurance corporation organized under and pursuant to the laws of Illinois with an Illinois charter to do business, which charter was forfeited to the state and its very existence therefore extinguished in accordance with Section 196 of the

Illinois Insurance Code after a hearing and pursuant to a prayer in a petition for such a dissolution, as required by Section 196.

III. The decision of the Supreme Court of Illinois draws in question the validity of Sections 187, 188, 189, 190, 191, 194, 196 and 208 of Chapter 73 of the Revised Statutes of Illinois, 1937, known as Article XIII of the Illinois Insurance Code (T. 75). The Supreme Court of Illinois held them to be valid and so construed them and applied them in the case at bar as to constitute a legal and constitutional justification for its refusal, and to constitute a legal exception to obedience to Article IV of the Constitution, and for their refusal to give full faith and credit to the said Missouri judgment, as required by Section 1, Article IV, of the United States Constitution. The Supreme Court of Illinois held that the courts of other states and litigants in pending suits against Chicago Lloyds were required to recognize the rights of the liquidator, established by the decree authorized by the Illinois statute for the liquidation of insolvent insurance companies, and placed Chicago Lloyds, an unincorporated association, in the same category with corporations having charters, and holding in substance that the law of Illinois would follow Chicago Lloyds into Missouri, although the court expressly recognized the fact that it was an unincorporated association (T. 73).

The Supreme Court of Illinois (T. 83) held "full faith and credit requires the Missouri creditor, claiming rights under a judgment, to likewise recognize the binding effect of the Illinois judgment",—thus giving the full-faith-and-credit clause of the Constitution, Section 1, Article IV, a construction whereby individuals as well as states are required to give full faith and credit to judgments obtained in other states.

The construction of the Illinois Insurance Code, given

by the Supreme Court in its opinion, in holding, in effect, that the appointment of the Director of Insurance, as liquidator, dissolves Chicago Lloyds is in conflict not only with Sections 1 and 2, of Article IV, but with Article VI providing that the Constitution of the United States shall be the supreme law of the land, and with Section 1 of the Fourteenth Amendment of the said Constitution, since it deprives appellant of his property without due process of law. It is even contrary to the recent Illinois decisions holding that the appointment of a Receiver in a suit to wind up a corporation, does not dissolve the corporation itself, and that it remains a suable entity, until the final order of dissolution; that it is also contrary to the recent decisions of the Supreme Court of Illinois and to the universal rule of law, that partnerships and Joint Adventurers remain liable to be sued, and are not "dissolved," even though, a partner withdraws, which only "terminates" the partnership,—and that dissolution of the partnership is not accomplished until all of its affairs are finally closed and completed—and that the same is true of an unincorporated association not incorporated and of joint adventurers or the partnership is even dissolved.

IV. Appellant filed his claim with the Liquidator on September 21, 1938, which was within the time specified by the court. He attached a copy of the petition, which was then pending in St. Louis, to his said claim and set out that when the claim in St. Louis was reduced to judgment he would file an amended and supplemental claim.

The Illinois court erroneously held that said Illinois Insurance Code Section 191 was entitled to be given the same extra-territorial effect, that must be given to the National Bankruptcy Law (T. 76-77) that therefore it was not necessary that the appellant be served or notified in the liquidation proceeding because said proceedings are proceedings in rem, "comparable to the National Bankruptcy

Act, and that the statute vesting title (Sec. 191) should receive the same construction"; so that title to all of the property of Chicago Lloyds, with actual constructive possession, is placed in a trustee, without regard to his location or place of adjudication (T. 77) and held, that the liquidator in the case at bar became vested with the title to all of the property of Chicago Lloyds, wherever situated and that the courts of all other states are required to recognize the rights of such liquidator, established by the Illinois decree of February 9, 1938.

ARGUMENT.

A.

The Courts of Illinois Were Required to Give Full Faith and Credit to the Missouri Judgment.

I.

Section 1 of Article IV of the Constitution of the United States, and the Act of Congress enacted May 20, 1790, and the decisions of this Court required the courts of Illinois to give full faith and credit in that State to the Missouri judgment for money based upon a civil cause of action.

The Supreme Court of Illinois held that they were not.

Section 1 of Article IV of the Federal Constitution provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Pursuant to the authority vested in it by this section, Congress enacted the law commonly known as "The Act of Congress enacted May 26, 1790" (R. S. Sec. 905, 28 U. S. C. 687), which provides in part as follows:

> "And the said Records and judicial Proceedings, so authenticated, shall have such Faith and Credit given to them in every court within the United States as they have by law or usage in the court of the State from which they are taken."

The purpose of the full faith and credit clause ought not be overlooked in this case, because the Supreme Court of

Illinois, by its decision, has engrafted upon it the exception that, in cases involving the distribution of a debtor's property among its creditors, the court of the liquidation is not required to give full faith and credit to sister State judgments adjudicating claims against the debtor.

The general effect of the full faith and credit clause, and its specific effect with respect to **rights** judicially established in one State, have been stated by this Court in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 439-440, in the following language:

> "The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application (Citations). Because there is a full faith and credit clause **a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment** and a plaintiff may not for his single cause of action secure a second or greater recovery." (Emphasis supplied.)

In this case the Director is challenging, a second time, the validity of appellant's right "which has ripened into a judgment" in Missouri.

In Missouri, the judgment is an adjudication that Chicago Lloyds is indebted to the appellant in the amount thereof and could be satisfied out of any of their assets found in Missouri. By the Missouri law "a judgment is the decision or sentence of the law pronounced by a court or other competent tribunal upon the matter contained in the record. * * * It is the final consideration and determination of a court of competent jurisdiction upon matters

submitted to it" (Orchard v. Store Co., 225 Mo. 414, 468, 125 S. W. 486). "A judgment is a debt, a property right * * *" (Vitale v. Duerbeck, 338 Mo. 556, 571, 92 S. W. [2d] 691). A jugment is a debt of record. Therefore, unless an exception to the full faith and credit rule is to be made in this case, the Missouri judgment is entitled to have the same effect in Illinois; it is entitled to recognition as an adjudication that Chicago Lloyds is indebted to the appellant. The appellant does not contend that, by virtue of the Missouri judgment, he is entitled to a lien upon the debtor's property found in the possession of Liquidator, or to a preference or to a priority in the distribution thereof.

In Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438, this Court said: "We are aware of no such exception in the case of a money judgment rendered in a civil suit."

II.

This Court Has Consistently Required That Full Faith and Credit Be Given to Money Judgments Rendered on Civil Causes of Action, Even in Situations Where the Enforcement or Recognition of the Judgment in the State to Which It Was Brought Would Conflict With the Policy of That State.

Generally, the duty of giving full faith and credit to sister-State judgments has been observed by the States. It has been observed in liquidation proceedings not distinguishable in principle from the proceeding here (Pringle v. Woolworth, 90 N. Y. 511; Taylor v. Gray, 59 N. J. E. 621, 629-630). It has been observed even in cases where enforcement has required the application of the equitable remedy of imprisonment for contempt (German v. German, 122 Conn. 155, 188 A. 429; Goldberg v. Mayer, 277 N. Y. S. 799, aff'd 270 N. Y. 660, 1 N. E. [2d] 986; Little v. Little, 262

N. Y. S. 654; Biewend v. Biewend, 17 Cal. [2d] 108, 109 P. [2d] 701; Shenandoah Valley National Bank v. Hiett, 121 W. Va. 454, 6 S. E. [2d] 769; Stewart v. Stewart, 27 W. Va. 167, 174-175). The remedies given in the State to which the judgment is brought are those ordinarily appropriate to the action, thus affording like means of enforcing foreign and domestic judgments.

Several cases have been brought to this Court where States had not given full faith and credit to judgments of sister States upon the ground that to do so would conflict with their **policies**. A State may adopt a policy which prevents the recovery of a judgment in its own courts upon a given state of facts. It cannot, however, adopt a policy which would prevent the recovery of a judgment upon the same facts in other States. Full faith and credit are given to the **judgment**, not to the **cause of action**. So, where a **judgment** has been rendered by a sister State, full faith and credit must be given to that judgment, even though the State to which it is brought would not have permitted a recovery for the cause, upon which it is founded.

A State cannot adopt **a policy** against giving full faith and credit. The policy of a State is controlled by, and must remain subordinate to, the Federal Constitution. In case of conflict, the former must yield. The full faith and credit clause is a law unto the States, and a State cannot refuse to obey it on the theory that it conflicts with State policy. For, if States could successfully interpose their separate and different policies, which may and do vary from time to time within each State, as a reason for not giving full faith and credit, the positive command that "full faith and credit shall be given" would be reduced to the rule of comity, which obtains among nations **not so bound**. If State policy were to prevail over the full faith and credit clause, that clause would have little, if any, effect.

In Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 (1943), reversing 10 So. (2d) 109, Louisiana was required, by the full faith and credit clause, to give effect to a Texas judgment as a bar, under the doctrine of res judicata, to a second recovery under the Louisiana law for the same injury, notwithstanding the injured employee was a resident of Louisiana. (See pages 436-440 of the opinion.)

That case, we think, controls this one. Here, Illinois has refused to give effect to the Missouri judgment, insisting that, in order to share in the property of the debtor, the Missouri judgment creditor is required to try, de novo, before the court of Liquidation, the cause of action upon which the Missouri judgment is founded, thereby refusing to give effect to the Missouri judgment as res judicata of that cause of action.

In Williams v. North Carolina, 317 U. S. 287 (1942), reversing 220 N. C. 445, 17 S. E. (2d) 769, North Carolina was required to give full faith and credit to decrees of divorce rendered in Nevada, notwithstanding the grounds for divorce upon which the Nevada decrees were founded would not have been sufficient to support decrees for divorce under the laws of North Carolina. This Court said (pp. 302-303):

> "It is objected, however, that if such divorce decrees must be given full faith and credit, a substantial dilution of the sovereignty of other states will be effected. * * * Such is part of the price of our federal system. * * * It is a Constitution we are expounding—a Constitution which in no small measure brings separate sovereign states into an integrated whole through the medium of the full faith and credit cause * * *. So, when a court of one state * * * alters the marital status of one domiciled in that State by granting him a divorce from his absent spouse, we can not say its decree should be excepted from the full faith and credit clause merely because its enforcement or

recognition in another state would conflict with the policy of the latter."

The case here is stronger for full faith and credit than the **Williams** case, for here Illinois, like Missouri, would allow recovery for the cause upon which the Missouri judgment is founded—a damage action.

In Fauntleroy v. Lum, 210 U. S. 230, 236 (1907), reversing 80 Miss. 757, Mississippi was required to give full faith and credit to a judgment of Missouri, notwithstanding the cause of action on which the judgment was based arose on a gambling transaction, entered into in Mississippi and illegal under the laws of that State. Here, too, the circumstance that Mississippi would not have allowed recovery for the **cause of action** upon which the Missouri judgment was founded, as contrary to the policy of Mississippi in respect to gambling, was not deemed of sufficient weight to relieve it of its duty under the Constitution of giving full faith and credit to a judgment of Missouri.

A State might be especially disinclined, in a case like this, to enforce a sister-State judgment—where one of its residents, seeking to evade its laws by securing a judgment in a sister State whose laws are more favorable, brings that judgment back to the State of his residence for enforcement. That is not the situation in this case. The appellant did not leave Illinois to obtain judgment in Missouri. He brought suit in Missouri, the State of his residence and in which the debtor was doing business when suit was commenced, upon a cause of action which accrued to him in that State, and obtained a final judgment, which he could have enforced in Missouri had Chicago Lloyds any property located in Missouri.

In Kenney v. Supreme Lodge, 252 U. S. 411 (1920), reversing 285 Ill. 188, Illinois was required to give full faith and credit to a judgment of Alabama, notwithstanding the cause of action on which the judgment was based

was one for death by wrongful act inflicted in Alabama, suit upon which could not have been maintained in Illinois under its laws. It was said in this case (p. 415) that "a State cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to courts otherwise competent."

In Roche v. McDonald, 275 U. S. 449 (1927), reversing 136 Wash. 322, Washington was required to give full faith and credit to a judgment of Oregon, notwithstanding a suit on the original cause of action would have been barred in Washington before the judgment was procured in Oregon. Here there was a difference in the policies of the States in respect to the matter of limitations of action.

In Converse v. Hamilton, 224 U. S. 243, 252-253 (1911), reversing 136 Wis. 589, Wisconsin was required to give effect, at the suit of a Minnesota receiver or "quasi-assignee," to Minnesota proceedings assessing stockholders' liability, notwithstanding that "to permit the actions to be maintained in the Wisconsin courts would be contrary to the settled policy of that State in respect of the enforcement of the like liability of stockholders in its own corporations." This Court thought that Wisconsin could have no policy on the subject of the litigation, that is, on the matter whether stockholders of a **Minnesota** corporation should be liable for assessments.

In Titus v. Wallick, 306 U. S. 282, 291-292 (1938), reversing 133 Ohio St. 612, 15 N. E. (2d) 140, Ohio was required to give full faith and credit to a money judgment in a civil action rendered in New York, notwithstanding Ohio would have been under no duty to entertain the suit on which the judgment was founded because in conflict with its laws and policies. This Court said (pp. 291-292):

> **"The Ohio court is not free to withhold from petitioner (the judgment creditor) • • • the full benefit of the constitutional command that the judgment shall**

receive in the courts of Ohio such faith and credit as it is entitled to receive in New York. A state which may not constitutionally refuse to open its courts to a suit on a judgment of another state because of the nature of the cause of action merged in the judgment, Kenney v. Supreme Lodge, supra, 415, obviously **cannot, by the adoption of a particular rule of liability or of procedure, exclude from its courts a suit on the judgment.**" (Emphasis supplied.)

Illinois, by the decision in this case, did that which this Court has said cannot be done. It has adopted a rule of practice under which a creditor, who adjudicates the merits of his claim in a competent court of a sister State, will not be allowed to share in the property of the debtor merely because he did not adjudicate the merits of his claim in the court of the liquidation.

In Broderick v. Rosner, 294 U. S. 629 (1934), reversing 113 N. J. L. 305, 174 A. 507, New Jersey was required to entertain an action upon an assessment by the New York Superintendent of Banks for the superimposed liability of stockholders (which assessment, it was decided, had the effect of a judgment under the full faith and credit clause), notwithstanding a statute of New Jersey provided that no proceeding shall be maintained in the courts of that State to enforce a stockholder's statutory personal liability arising under the laws of another State, except suits in the nature "of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties." This statute had substantially the same effect as the Illinois rule, that the court of the liquidation has exclusive jurisdiction to adjudicate claims against the debtor. New Jersey, like Illinois, assumed exclusive jurisdiction over the whole proceeding for the assessment

and enforcement of stockholders' liability, and refused to give effect to assessments made by other States against stockholders residing in New Jersey. In short, New Jersey wanted exclusive jurisdiction or no part of the litigation. This Court, holding that the statute denied to the Superintendent of Banks the right to resort to the courts of New Jersey to enforce the assessments, said (p. 642):

> "The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard therein is subject to the limitations imposed by the Federal Constitution. * * * A 'State cannot escape its constitutional obligations (under the full faith and credit clause) by the simple device of denying jurisdiction in such cases to courts otherwise competent.' * * * But it (a State) may not, under the guise of merely affecting the remedy, deny the enforcement of claims otherwise within the protection of the full faith and credit clause, when its courts have general jurisdiction of the subject matter and the parties. (Citations.) For the States of the Union, the constitutional limitation imposed by the full faith and credit clause abolished, in large measure, the general principle of international law by which local policy is permitted to dominate rules of comity.
>
> "Here the nature of the cause of action brings it within the scope of the full faith and credit clause."

In this case, Illinois has denied to the appellant the right to resort to the courts of Illinois to enforce the Missouri judgment.

The same rule of law was announced by this Court in Christmas v. Russell, 72 U. S. 290, 302.

So, in this case, the denial of full faith and credit to the Missouri judgment under the rule that the court of the liquidation has exclusive jurisdiction to adjudicate claims, is but an attempt to give operation to that rule "in all the other States of the Union by denying the efficacy of any

judgment recovered in another State." (See Point IV of A this Brief.)

Cases in which full faith and credit were refused because the judgment was **void** are not, strictly, exceptions. A void judgment is a **nullity**. It only **appears** to be a judgment, and full faith and credit may be refused to it because it is a nullity. Thus, where the judgment was void because it had been rendered against an **insurance corporation**, after its dissolution, full faith and credit were not required (Pendleton v. Russell, 144 U. S. 640). This Court, however, said (p. 646): "Had the original judgment * * * been rendered when the insurance company was in existence, it would have stood as a valid claim against the assets of that company after its dissolution." The principle of that case does not apply here, because Chicago Lloyds is not an artificial and State-created entity, and has not been dissolved. It is settled law in Illinois that an order directing liquidation or appointing a liquidator does not have the effect of "dissolving" the debtor (Dillon v. Elmore, 361 Ill. 356, 363; People v. West Side Trust and Savings Bank, 302 Ill. 607, 616).

Similarly, where the judgment was **void**, because the Court which rendered it had no jurisdiction, full faith and credit were properly refused (Van Dyke v. Ill. Com. Men's Assn., 358 Ill. 458).

There is an important distinction, which the Supreme Court of Illinois has overlooked, between the **judgments**, and the **statutes** or **laws** of sister States, (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 436-440). Congress has not prescribed a measure of the faith and credit that shall be given to **statutes** or **laws** of sister States, as it has for judgments. Until it does so, the measure must be determined by this Court. This Court is the "final arbiter" of questions arising under the full faith and credit clause (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 433; Williams v. North Carolina, 317 U. S. 287, 303; Milwaukee

County v. M. E. White Co., 296 U. S. 268, 277-278; Adkins v. Adkins, 386 Ill. 346, 347). Where full faith and credit is asked for a sister-State statute or law which is in conflict with a statute or law of the State of the forum, the question, which of the laws ought to be applied, arises. A literal application of the full faith and credit clause might result in the subordination of the law of the State of the forum to the law of the sister State, even in a case where the State of the forum has a legitimate interest in the subject matter.

Accordingly, in some cases, in order to accommodate divergent State interests, this Court has not required the State of the forum to apply statutes or laws of sister States which are in conflict with its own (Pacific Employers Ins. Co. v. Industrial Accident Com. of Calif., 306 U. S. 493, 83 L. ed. 940; Alaska Packers Assn. v. Industrial Accident Com. of Calif., 294 U. S. 532, 79 L. ed. 1044). But even with respect to statutes or laws, to give full faith and credit is the rule; to refuse them is the exception.

Exceptions made in cases involving statutes or laws are not precedent for exceptions in cases involving judgments. Since a judgment for money only establishes the rights of the judgment creditor against the judgment debtor, a conflict in the policies of States, such as may arise where faith and credit are asked for sister-State statutes or laws, cannot arise where such a judgment is brought to another State for enforcement.

Full faith and credit were refused to the Missouri judgment in this case, not because it is invalid, but because of a mere matter of procedure—because the claim on which it was founded was adjudicated before a court of Missouri and not before the court of the liquidation.

In liquidation cases, where the property of a debtor has been taken by a State for distribution among the creditors of the debtor, it is beyond the reach of ordinary execution (Jackson v. Lahee, 114 Ill. 287, 295; Rickert v. Suddard,

184 Ill. 149, 153; Riehle v. Margolies, 279 U. S. 218, 225). The taking of the property of the debtor by the Liquidator has the effect of a collective execution for all the creditors of the debtor. The substantive rights of the creditors are not affected by the taking. Creditors are entitled to share ratably in proportion to their rights in the debtor's property (Evans v. Illinois Surety Company, 298 Ill. 101, 114; People v. Marquette Nat. Fire Ins. Co., 267 Ill. App. 478, 482; Torrington Co. v. Sidway-Topliff Co., 70 F. [2d] 949). For these reasons, it is only necessary in such a case that creditors present and establish their rights in order to become entitled to share in the property in due course of administration. Where a creditor has established, by the judgment of a competent court of a sister State, that the debtor is indebted to him, it should only be necessary to present that judgment to the court of the liquidation, in order to be entitled to share in the debtor's property in due course of administration (Riehle v. Margolies, 279 U. S. 218, 225). A State can not discriminate against a creditor on the ground merely that he has adjudicated his claim and established his right in a court of a sister State (Constitution of the United States, Sec. 2, Art. IV, and Sec. 1, Amendment XIV; Blake v. McClung, 172 U. S. 239; Torrington Co. v. Sidway-Topliff Co., 70 F. [2d] 949).

It is apparently the policy of Illinois to require claimants to prove their claims before the court of the liquidation and not to accept the judgments of sister States as an adjudication of the existence and amount thereof. Such a policy, when applied to sister-State judgments, is, we submit, in direct conflict with said federal Constitution, the Act of Congress, and the decisions of this Court.

III.

The Decisions of This Court, Cited in the Opinion of the Supreme Court of Illinois as Authority for Refusing to Give Full Faith and Credit to the Missouri Judgment, Are Distinguishable Either on the Ground That They Did Not Involve Sister-State Judgments, or on the Ground That the Judgment Was Void for Want of Jurisdiction in the Court Which Rendered It, or for Some Other Reason.

None of the decisions of this Court, cited by the Supreme Court of Illinois as cases in which full faith and credit were not required, is authority for refusing full faith and credit to the Missouri judgment. The Supreme Court of Illinois has stated that the questions presented have never been decided by this Court (T. 78 to 82). And in an attempted substantiation of that statement the opinion divides such cases into four classes.

First Class.

In the cases cited as being within the first class, full faith and credit were given (T. 78).

Second Class.

The opinion states that full faith and credit have been refused in cases of the second class, and that it "covers a wide field" (T. 79).

The first case of this second class which is cited (T. 79), is Wisconsin v. Pelican Ins. Co., 127 U. S. 265. That was an action, brought in this Court, on a judgment **for a penalty**. The primary question in the case concerned the extent of the **original** jurisdiction of this Court. It was decided that this Court did not have original jurisdiction to entertain the action because its original jurisdiction is limited to civil actions. The case was thereafter distin-

guished by Mr. Justice Holmes in Fauntleroy v. Lum, 210 U. S. 230, on the theory that it involved only a question of jurisdiction, not of full faith and credit. It is not even authority for the proposition that full faith and credit will not be given to a judgment for a penalty. That question is still open. As recently as 1935, this Court, in Milwaukee v. M. E. White Co., 296 U. S. 268, 275, said that it did not intimate an opinion on that question; but it did hold in that case that full faith and credit must be given to a judgment said to be for taxes. Commenting on said Pelican case, this Court said (p. 278):

> "So far as the opinion (in the Pelican Ins. Co. case) can be taken to suggest that full faith and credit is not required with respect to a judgment unless the original cause of action would have been entitled to like credit, it is inconsistent with the decisions of this Court already noted and was discredited in Fauntleroy v. Lum, supra, 36, 37, and Kenney v. Supreme Lodge, supra, 414."

That case, therefore, cannot be regarded as precedent for this one.

The opinion of the Supreme Court of Illinois also mistakenly states (T. 79) that the Pelican case was **followed** in Huntington v. Attrill, 146 U. S. 657. The Pelican case was **distinguished** in the Huntington case at page 672, and, as above stated, it was also distinguished in Fauntleroy v. Lum, 210 U. S. 230. The Huntington case **required** that full faith and credit be given to a judgment. The judgment creditor, after obtaining the judgment in New York, filed a bill in Maryland to set aside an alleged fraudulent transfer of assets by the judgment debtor and to charge those assets with the payment of the judgment. The defendant, relying on the Pelican case, contended that the judgment was for a penalty and, for that reason, was not entitled to full faith and credit. This Court reversed the Maryland court, which had refused full faith and credit.

The language distinguishing the Pelican case is at page 672 and the language reversing the Maryland court for refusing to give full faith and credit is at page 686 of the report.

Anglo-American Provision Co. v. Davis Provision Co., 191 U. S. 373, is cited (T. 79) by the Supreme Court of Illinois as another instance where full faith and credit were refused. That was an action brought in New York by one foreign corporation against another foreign corporation on a sister-State judgment. This Court upheld a statute of New York which forbad the bringing of an action in that State by one foreign corporation against another foreign corporation where the cause of action did not arise in New York. The case turned on the want of jurisdiction to entertain the action on the judgment in the court to which the judgment was brought for enforcement—on the doctrine of forum non conveniens. The full faith and credit clause does not confer **jurisdiction** to entertain actions on sister-State judgments, upon every court in the State to which a judgment is brought. A Justice of the Peace court of Illinois, the jurisdiction of which is limited to cases involving $500 or less, does not have jurisdiction of an action on a $50,000 judgment rendered by Missouri. Mr. Justice Holmes, commenting on the **Anglo-American Provision** case in **Kenney v. Supreme Lodge**, 252 U. S. 411, said that there are limits to the power of exclusion, and in **Broderick v. Rosner**, 294 U. S. 629, 643, the **Anglo-American Provision** case was confined to the factual situation there presented.

The Supreme Court of Illinois has overlooked, in two of the other cases cited as falling in said second class, the distinction between the **statutes** or **laws** of sister States, and the **judgments** of sister States (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 436-440). The opinion implies (T. 79) that in Finney v. Guy, 189 U. S. 335, full faith and credit were denied to a **judgment**. However, the action in that

case, brought in Wisconsin, was not on a **judgment**, but to enforce the **liability** of stockholders of a corporation **under the Minnesota law**. This Court decided that the complaint did not state a cause of action for the reason that, under the **Minnesota law**, as it then was, the statutory action to enforce the liability of stockholders could not be maintained outside of Minnesota. That the interpretation given said **Finney** case by the Supreme Court of Illinois is incorrect, is confirmed by **Converse v. Hamilton**, 224 U. S. 251, where, on identical facts (except that the Minnesota statute had by that time been changed) it was held necessary to give full faith and credit to the **laws** of Minnesota and to the judicial proceedings upon which the receiver's title, authority and right to relief are grounded. The **Finney** case was distinguished at page 254. The **Finney** case is not authority here, because it did not involve a money **judgment** of a sister State, but a special statutory action which could be brought **only** in Minnesota.

The distinction between **statutes** or **laws** and **judgments** was again overlooked by the Supreme Court of Illinois (T. 79) in its comment upon Griffin v. McCoach, Trustee, 313 U. S. 498. That case is cited for the proposition that "a **judgment** against an insurance company on a policy, enforceable because the beneficiary has an insurable interest in the State where the contract is made, may not be enforceable in another State, where the same interest of the beneficiary is held not to be an insurable one" (p. 502). (Emphasis added.) **In that case a judgment of one State was not presented in another as the language above quoted from this opinion of the Supreme Court of Illinois implies.** The action was brought in the United States District Court for the Northern District of Texas upon a **policy of insurance**, not upon a **judgment**. The insurance company filed an interpleader, and the controversy over the fund was between the beneficiaries named in the policy and the legal representatives of the deceased. The question was whether

a federal court sitting in Texas would apply the law of Texas or that of New York in determining whether the beneficaries had an insurable interest. If a judgment of New York had been presented for enforcement in Texas, the latter State would have been required to give full faith and credit to it, irrespective of its own law or policy relating to insurable interest. (See Kenney v. Loyal Order of Moose, 252 U. S. 411, 414; Fauntleroy v. Lum, 210 U. S. 230).

The "wide field" of said second class is thus narrowed to one "discredited" case involving a judgment for a penalty, and to a case where suit on the judgment was brought in a court without jurisdiction to entertain the action.

The judgment in this case is not for a penalty, and there can be no question but that the Superior Court of Cook County, Illinois, had jurisdiction to entertain an action on the Missouri judgment.

The Supreme Court of Illinois says (T. 79): "The nature of a case as constituting a cause of action in the several States, is not changed by the fact that it is reduced to judgment. * * *." This second type of cases represents a class which, if originally brought in the State in which enforcement of the judgment is sought, could not have been maintained, and are therefore not made valid by a judgment elsewhere" (T. 80). This excerpt is a mere restatement of the same doctrine previously announced by that same Illinois Court in Kenney v. Loyal Order of Moose, 285 Ill. 188, and REPUDIATED by this Court in reversing that case (252 U. S. 411). In that case, a judgment had been recovered in Alabama upon an action for death by wrongful act. Then an action on the Alabama judgment was brought in Illinois. If the action for death by wrongful act, upon which the Alabama judgment was founded, had been brought in Illinois, it could not have been maintained under the laws of Illinois. The Supreme

Court of Illinois, however, looking behind the judgment, held that Illinois was not required to give full faith and credit to the **judgment** because suit on the **cause of action**, on which the judgment was founded, could not have been maintained in Illinois for want of jurisdiction. It reasoned that, if courts of Illinois do not have jurisdiction of the cause of action, they do not have jurisdiction of a judgment based thereon. A similar thought is expressed in the opinion of the Supreme Court of Illinois in this case (opinion, T. 79): "The nature of a case as constituting a cause of action in the several States is not changed by the fact that it is reduced to judgment." In correcting and reversing the Supreme Court of Illinois in that case, this Court said that there were limits to the power to consider the nature of the cause of action before the foreign judgment based upon it is given effect.

Third Class.

The opinion of the Supreme Court of Illinois (T. 80) describes the third class of cases as those which arise "when the judgment or decree sought to be enforced will, if enforced, require the application of a different law to property, or the right to take property, from that of the State in which it is sought to be enforced." Five cases are cited as "instances in which the judgment of one State is unenforceable in another under the full faith and credit clause, if opposed to the law of the latter" (p. 503).

The Supreme Court of Illinois has misapprehended the holdings in these cases. The first three simply apply the principle that the State **in which land is situated** controls and governs its transmission by will or its passage in case of intestacy and that the courts of sister States have no **jurisdiction** over that "particular subject matter."

Thus, in **Clarke v. Clarke**, 178 U. S. 186, by a decree of South Carolina it was decided that a will worked an

equitable conversion of real estate situated in Connecticut, and, upon such a construction of the will, that the real estate was transmitted as personalty. This Court, proceeding upon the theory that the State where land is situated has exclusive jurisdiction over it and, for that reason, is the only State which can finally decide questions involving the mode of passing title to such land, held that Connecticut was not required to give full faith and credit to the South Carolina decree.

Olmstead v. Olmstead, 216 U. S. 386, cited by the Supreme Court of Illinois for the proposition that "a judgment determining the legitimacy of children" is not entitled to full faith and credit, does not so hold. It is but an application of the doctrine of **Clarke v. Clarke** that the law of a State in which land is situated controls and governs its descent, alienation and transfer and that neither a decree of a court nor a statute of another State can have any efficacy as to title of real estate beyond the jurisdiction of that State. This Court said (p. 392):

> "The question therefor is as to the title to real estate in the State of New York."

Nor is **Hood v. McGehee,** 237 U. S. 611, authority for the proposition that "the manner of adoption of children" is not entitled to full faith and credit. It, too, is simply another application of **Clarke v. Clarke.**

Robertson v. Pickrell, 109 U. S. 608, 27 L. ed. 1049, is a decision to the same effect.

Cases of this character have no application here because Missouri had jurisdiction to hear and determine the *in personam* action for damages brought by appellant against Chicago Lloyds.

Gasquet v. Fenner, 247 U. S. 16, is cited as an instance in which the judgment of one State on "the capacity of a

lunatic'' is unenforceable in another State if opposed to the law of the latter.

Manifestly, this case did not deny full faith and credit. It only held that, under the Louisiana Code, the Louisiana judgment declaring the plaintiff to be incompetent must be vacated before he could resume the exercise of his rights.

Pink v. A. A. A. Highway Express, Inc., 314 U. S. 201, is cited as a case where the **judgment** of one State on "the interpretation of contracts'' is unenforceable in another if opposed to the law of the latter. The case does not so hold. Here, again, the distinction between the **judgments** and **laws** of sister States was overlooked. There was no **judgment** interpreting a contract in that case.

The **Pink** case, unlike this case, did not involve a **judgment** based on personal service in the State where the judicial proceedings were had. It was not determined in New York, as it was determined in Missouri in the present case, that the defendants were personally liable. The question whether the defendants were members had not been decided in New York, and, when they were sued in Georgia, the courts of that State were required to decide that question and, in order to do so, to construe the contract. If the defendants had been served personally in New York and if New York had held, upon its construction of the contract, that the defendants were members of the company, and so had rendered a **judgment in personam** against them, then, if a suit on that **judgment** had been brought in Georgia, Georgia could not, under the decisions of this Court, go behind the New York judgment, place its own construction upon the contract, and refuse to give full faith and credit to the New York judgment.

The cases placed in the third class are clearly inapplicable to the Missouri money judgment and are not authority for refusing full faith and credit to it.

Fourth Class.

The opinion of the Supreme Court of Illinois states (T. 80):

> "In recent years there has been a trend towards yet another class of cases involving full faith. Where a party has an option to proceed under the laws of one or two or more States having similar laws, as in compensation cases, where the liability may be enforced either where the contract of employment is made, or where the injury occurs; and cases involving the liquidation of corporations, where they acquire title to the property by the judgment and laws of one State but have property in another which is subject to preferences which may be created by the State law of the latter."

The compensation cases cited are Pacific Employers Ins. Co. v. Industrial Accident Com. of Calif., 306 U. S. 493, 83 L. ed. 940; Alaska Packers Ass'n v. Industrial Accident Com. of California, 294 U. S. 532, 79 L. ed. 1044; Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 88 L. ed. 149.

The cases cited in the paragraph dealing with liquidations (T. 82) are Relf v. Rundle, 103 U. S. 222; Clark v. Williard, 292 U. S. 112; Clark v. Williard, 294 U. S. 211; Robertson v. Pickrell, 109 U. S. 608; Harkin v. Brundage, 276 U. S. 36; Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189.

None of these cases is authority for refusing full faith and credit to sister-State money judgments based upon civil causes of action. Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, is strong authority for requiring them.

The question which law ought to be applied arose in Alaska Packers Ass'n v. Industrial Accident Commission, 294 U. S. 532, and this Court held that California, the State of the forum, which was also the State of the employer and employee, was free to apply its own compensation law to an injury to an employee received in Alaska

and was not required to apply the law of the State where the injury occurred. Similarly, in Pacific Employers Insurance Co. v. Industrial Accident Commission of California, 306 U. S. 493, this Court held that the State of the forum, which also was the State where the injury had occurred, was free to apply its own law and was not required to apply the law of the State of the employer and employee. A **judgment** was not involved in either case.

These two cases presented the question whether the State of the forum is required to apply the **law** or **statute** of a sister State or whether it may apply its own law to a proceeding, **not reduced to judgment**, pending before it and involving a matter of local or domestic interest.

On the other hand, Magnolia Petroleum Company v. Hunt, 320 U. S. 430, presented the question whether, under the full faith and credit clause, a **judgment** rendered by one State in a compensation case is a bar to a second action for the same injury brought in another State under the laws of the latter. This Court held that the **judgment** of Texas was a bar, on principles of res judicata, to a second recovery for the same cause of action, and that under the full faith and credit clause, Louisiana was required to give effect to the Texas judgment as a bar to a proceeding brought in Louisiana upon the same cause of action.

These three cases illustrate the distinction between the application of the full faith and credit clause to sister-State **statutes** or **laws** and its application to **judgments**. In the first two cases, the State of the forum was **not** required to apply sister-State statutes; but in the third, the State of the forum **was** required to give effect to the sister-State **judgment**.

Commenting upon and reasoning from these three compensation cases, the Supreme Court of Illinois draws the conclusion (T. 81) that "the result is analogous to that resulting from taking possession of the res—viz., the court

first obtaining possession, may not be disturbed by actions of other courts having concurrent jurisdiction." However, this Court, in deciding those cases, did not draw any such analogy that "the court first obtaining possession (of the res) may not be disturbed by other courts having concurrent jurisdiction." In none of said compensation cases was there a conflict between two courts or a possibility that one court would "be disturbed by other courts having concurrent jurisdiction." Therefore, the avoidance of a conflict or collision between courts was not a factor in those decisions. They rest simply upon the principles governing the application of the full faith and credit clause, to sister-State laws.

Relf v. Rundle and the two Clark v. Williard cases cited by Illinois Supreme Court (T. 82) did not hold that full faith and credit are not required for a sister-State judgment. They relate generally to the title acquired by a statutory liquidator of a legally dissolved insurance company and, clearly, are not authority for refusing full faith and credit to this Missouri judgment. These cases are entirely without application here for the reason that in this case there is no question which concerns the res, or the right to administer it. The right of the Director to administer the res has not been questioned in this case. There is no question concerning preferences to Missouri creditors, with respect to property located in Missouri. There is no question concerning liens on property in the possession of the Director. The matter of the right to administer the res is not one of the issues in this case. **It is introduced into the case for the purpose of developing the new legal theory,** that the court of the liquidation has exclusive jurisdiction to adjudicate claims; and, for that reason, is not required to give full faith and credit to judgments of sister States adjudicating claims.

The two remaining cases—Harkin v. Brundage, 276 U. S.

36, and Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, cited for the proposition "that the court which first acquires jurisdiction over the res is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction," are not authority for refusing full faith and credit to sister-State **money judgments**. They are silent on the subject of full faith and credit. They did not pass upon the matter of **adjudication of claims** against the debtor in liquidation, but with the matter of **administering** the res. They dealt with the question—which of two courts, each having jurisdiction to administer a res, will be entitled to do so. In those cases there was a conflict between two courts or agencies of the government, both of which had jurisdiction to take, administer and dispose of the res. The exercise of jurisdiction by both would bring them into collision, to prevent which, the rule was adopted, that the court first acquiring jurisdiction over the res is entitled to administer and dispose of it without interference by the other. In this case there is no such conflict. Missouri asserts no jurisdiction over the res.

There is no discernible factual similarity between the compensation cases and the liquidation cases. Nor is there any similarity in the principles that were decided. The compensation cases presented questions regarding full faith and credit and did not touch the matter of jurisdiction over a res. The liquidation cases dealt with the question, which of two courts having concurrent jurisdiction, shall administer the res, and did not touch on full faith and credit.

Of the four classes of cases cited in the opinion of the Supreme Court of Illinois, none is precedent for refusing to give full faith and credit to this Missouri judgment. They show only that, in some situations (radically different than the one here), full faith and credit have not

been required. The opinion does not demonstrate **how** this case falls within, or is governed by, those which are cited. There is, in this case, no question (1) of want of jurisdiction in the court which **rendered** the judgment or of want of jurisdiction in the court to which the judgment was **brought**; (2) of the passage, by the Missouri judgment, of title to land situated in Illinois; or (3) of the application of the **law** of Illinois rather than that of Missouri to a cause of action not reduced to judgment.

If the Texas award in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, was res judicata in Louisiana under the full faith and credit clause, it is not apparent why the Missouri judgment here is not res judicata in Illinois.

IV.

Full Faith and Credit Cannot Be Refused to Sister-State Judgments Upon the Theory Adopted by the Supreme Court of Illinois, That the Court of the Liquidation Is the Only Court With Power to Adjudicate Claims Against the Debtor. The Court of the Liquidation Does Not Have Exclusive Jurisdiction to Adjudicate Claims Against the Debtor (Sec. 191, Ill. Ins. Code).

The Supreme Court of Illinois rests its refusal to give full faith and credit to the Missouri judgment, primarily upon Section 191 of the Illinois Insurance Code (Ill. Rev. Stat., Ch. 73, Par. 803), which purports to vest title to the property of certain kinds of debtors in the Director. It holds that title became vested in the Director in this case, wherein the debtor is an unincorporated association of individuals, who are only licensed yearly to transact their business in Illinois, that, therefore, the court of the liquidation has jurisdiction over the res; and that, therefore, the court of the liquidation is "entitled to retain it and dispose of it in accordance with the laws and processes of its jurisdiction" (meaning, evidently, that the court

of the liquidation not only has exclusive jurisdiction to administer the res, but also that it has exclusive jurisdiction to adjudicate claims against the debtor); and, therefore, because it has exclusive jurisdiction to liquidate claims, it is not required to give full faith and credit to sister-State judgments adjudicating claims against the debtor.

It must again be emphasized that no issue has been raised in this case concerning the right to administer the res in Illinois. Nor has an issue been raised concerning the jurisdiction of the court of the liquidation over that res. Missouri asserts no jurisdiction over it. There has been no levy upon, or sequestration of, that res, and there is no issue concerning a lien against that res or concerning a right to a preference or priority therein. The only question is whether the full faith and credit clause requires that the Missouri judgment against Chicago Lloyds, in personam, shall be allowed as a general claim to be paid ratably in due course of administration by the Director from that res.

The matter of the title of the Director to assets of Chicago Lloyds, an unincorporated association of individuals outside of the State of Illinois, **is introduced in the opinion, for the purpose of developing the legal theory** applicable to a dissolved Illinois created Insurance Corporation, **upon which full faith and credit may be refused to the Missouri judgment.** It is assumed in the opinion that, because jurisdiction to administer that res in Illinois, is exclusive, therefore jurisdiction to adjudicate claims against Chicago Lloyds is **also** exclusive.

It may well be doubted whether title to the property of an unincorporated association, whose property may be located in several States, can become vested by operation of a law of Illinois in a liquidator designated by that State. (Some of the property involved in this proceeding was owned by the members of Chicago Lloyds individually and was pledged by them to secure their several liabilities.)

Although, at the outset of its opinion, the Supreme Court of Illinois **correctly** states that Chicago Lloyds is an unincorporated association (T. 73), it later treats the association precisely as if they were a corporation which had received a charter from the State of Illinois and had been legally dissolved (T. 83).

The opinion cites Relf v. Rundle, 103 U. S. 222 (T. 82), but that was a case involving an insurance **corporation**—a corporation which had been legally dissolved. This case involves an unincorporated association which has not been dissolved. The theory upon which title to the property of a dissolved **corporation** becomes vested in the statutory liquidator designated by the State of incorporation, rests upon the principle that the statute, enacted by the State of incorporation which so provides, is part of the charter which the corporation has received from that State (Relf v. Rundle, 103 U. S. 222, 225). However, "Chicago Lloyds" has received no charter from the State of Illinois (Roach & Co. v. Harding, 348 Ill. 454, 464; 7 C. J. S., "Associations," 19, 21). It was formed by the act of its members, many not even residents of Illinois (T. 41 and 35, 36 and 37) (Claimant's Exhs. Nos. 15 and 16). They had transacted business in Illinois under a new license, renewable yearly. They also transacted business in Missouri under a license and may have done so in other States. Where an unincorporated association owns property located in more than one State, which of those States has the power of designating the "agent" (if he can be called an agent of the association) to liquidate **all** its property, wherever located? A corporation, which is created by the laws of only one of the States, carries its charter and laws of the State of its creation governing it, into other States in which it transacts business, and so the State of incorporation may designate the liquidating agent. An association has no charter to carry. "Chicago Lloyds" has no charter into which Section 191 of the Code can be read.

Consequently, that theory cannot apply to an unincorporated association which has commited a tort, upon which a valid final judgment has been rendered.

But even if it were to be assumed that the Director becomes vested with title to the property of an unincorporated association, it is not apparent how that circumstance would relieve a State of its duty to give full faith and credit to sister-State judgments, in personam, which do not affect that property or the title thereto. Vesting title in the Director does not make it impossible for Illinois to give full faith and credit to the Missouri judgment. Giving full faith and credit to sister-State judgments would in no respect whatsoever interfere with the administration of the res by the Director or with his title, **if he has title.** Vesting title in the Director did not have the effect of dissolving or of terminating the legal existence of Chicago Lloyds or of preventing the rendering of valid judgments, in personam against it (Dillon v. Elmore, 361 Ill. 356, 363; People v. West Side Trust and Savings Bank, 362 Ill. 607, 616; Commercial Trust Co. v. Mallers, 242 Ill. 50; Willits v. Waite, 25 N. Y. 577, 581; Clark v. Williard, 294 U. S. 211, 79 L. ed. 865).

There is a separate section in the Code governing the "dissolution of insurance corporations," which requires the filing of a petition containing a prayer for dissolution, the service of an order to show cause, and a full hearing before a decree dissolving the company may be entered (Ill. Rev. Stat., Ch. 73, Par. 808). There is no provision in the Code for the dissolution of unincorporated associations. No decree dissolving, or purporting to dissolve, "Chicago Lloyds" has been entered in this proceeding. The rule in Illinois is that **even** the dissolution of a partnership does not terminate its existence, and that it continues until the winding up of the partnership affairs is completed (Ill. Rev. Stat., Chap. 106½, Sec. 30; Thanos v. Thanos, 313 Ill. 499, 506; Heidenreich v. Bremner, 260 Ill.

439, 455). Moreover, "Chicago Lloyds" could not have been dissolved by the order finding that sufficient cause for liquidation existed because, at the time that order was entered, its members had not been made parties to the proceeding (Evans v. Illinois Surety Company, 298 Ill. 101, 117). Vesting title in the Director did not abate pending actions against "Chicago Lloyds" or oust other courts of their jurisdiction (1 C. J. S., "Abatement and Revival," 151-153, secs. 108, 109; 19 C. J. S., "Corporations," 1206, 1220; 12a C. J., "Corporations," 985; Ohio and Miss. Ry. Co. v. Russell, 115 Ill. 52, 57; Chemical Nat'l Bank v. Hartford Deposit Co., 156 Ill. 522, aff'd 161 U. S. 1, 40 L. ed. 595; Ewen v. American Fidelity Co., 261 U. S. 322; Toledo, W. & W. Ry. Co. v. Beggs, 85 Ill. 80; Mercantile Ins. Co. v. Jaynes, 87 Ill. 199; People v. Barnett, 91 Ill. 422, 431; Pine Lake Iron Co. v. LaFayette Car Works, 53 Fed. 853; Venner v. Denver Union Water Works, 40 Colo. 212, 90 P. 623, 629; O'Mara v. Newton & N. W. Ry. Co., 156 Ia. 701, 137 N. W. 942; Pringle v. Woolworth, 90 N. Y. 502; Hatch v. Morosco Holding Co., 19 F. (2d) 766; Evans v. Illinois Surety Co., 298 Ill. 101, 111).

This principle was conceded even in Evans v. Illinois Surety Co., 319 Ill. 105, 110, where full faith and credit were refused, the Court saying: "The appointment of the receiver did not necessarily abate pending actions against the surety company."

Even if title vested in the Director, his title would be that of a trustee, for the purpose of liquidating the property and distributing it among creditors. It still would be necessary to ascertain who were creditors, and the amounts of their claims. The determination that the appellant was a creditor and the amount of his claim could be made as well by the Missouri Court as by the Court of the liquidation.

The Supreme Court of Illinois apparently has assumed that jurisdiction over the res draws to the court of the

liquidation exclusive jurisdiction to adjudicate claims against the debtor; and that, for that reason, it is not required to give full faith and credit to sister-State judgments adjudicating claims. This Court, however, has decided in many cases that possession of the res does not draw unto the court which has possession **exclusive** jurisdiction to adjudicate claims.

In Riehle v. Margolies, 279 U. S. 218, 223, 224, the distinction between control over the property of a debtor in liquidation and the adjudication of claims, in personam, against that debtor, was noted and applied. In that case it was said that an order which results in the distribution of a debtor's property among creditors has a two-fold aspect: (1) to the extent that it deals **directly with the property**, the jurisdiction of the court in possession of the res is exclusive; and (2) in the matter of determining the **existence and amount of the indebtedness to the creditors seeking to participate**, the jurisdiction of the court in possession of the res is not exclusive. This Court said in that case: "The appointment of a receiver * * *, confers upon (the court) * * * jurisdiction to decide all questions incidental to the preservation, collection and distribution of the assets. * * * **But** the appointment of the receiver does not necessarily draw to the federal court the **exclusive** right to determine all questions or rights affecting the debtor's estate." In later decisions this Court has held that the adjudication of a claim is not a proceeding in rem; that a proceeding to adjudicate a claim, only establishes rights; that a judgment adjudicating a claim, does not deal with property and does not order distribution,—that it merely adjudges a question which precedes distribution (Commonwealth Co. v. Bradford, 297 U. S. 613, 619; followed in General Baking Co. v. Harr, 300 U. S. 433; Fischer v. American United Insurance Co., 314 U. S. 549, 555; Dickinson v. Universal Service Stations, Inc., 100 F. [2d] 753; Dempsey v. Pink, 92 F. [2d] 572. Cf. U. S.

v. Bank of N. Y. Co., 296 U. S. 493, 478). Harkin v. Brundage, 276 U. S. 36, and Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, are not at variance with the doctrine of Riehle v. Margolies.

It follows from the foregoing, that even if title vested in the Director, the court of the liquidation did not have exclusive jurisdiction to adjudicate claims against Chicago Lloyds.

Illinois, however, seems to have adopted the rule of practice that a receivership court has exclusive jurisdiction to adjudicate claims against the debtor (Evans v. Illinois Surety Company, 319 Ill. 105). (Actually, the Missouri Court **also** had jurisdiction to do so, and its jurisdiction attached long before the commencement of the liquidation proceeding.) In reaching that conclusion in the Evans case (which was directly criticized in Hatch v. Morosco, 19 F. (2d) 766, affirmed in Riehle v. Margolies, 279 U. S. 218), the Supreme Court of Illinois advanced and asserted two reasons: (1) that a receivership court, through its receiver, is in possession of the res; and (2) that a receiver may not be sued without the consent of the court appointing him.

Both reasons have but little force even in the case of a chancery **receiver**, and are utterly inapplicable to a **statutory** receiver like the Director here. For here, the Director, and not the court of the liquidation, is in possession of the res; and the Director, who was not appointed, and who could not have been appointed by the court (People v. Niehaus, 356 Ill. 104), may be sued without permission from **any** court (Bride v. Stormer, 368 Ill. 524, 526).

An examination of the opinion in Evans v. Illinois Surety Co., 319 Ill. 105, will disclose that **full faith and credit** were not refused to the judgment there upon the theory that the court of the liquidation had exclusive jurisdiction to adjudicate claims. The Court, in that case,

first decided that the court of the liquidation had exclusize jurisdiction to adjudicate claims and was not required, **by rules of comity**, to honor judgments of other States adjudicating claims. Then it considered whether the court of the liquidation was required, **by the federal Constitution**, to honor judgments of other States adjudicating claims, and it decided that it was not required to do so SOLELY upon the ground that **"the constitutional provision has no application to the receiver"** (pp. 112-113. See Point VII hereof.)

Whatever force the Illinois rule of exclusive jurisdiction to adjudicate claims may have in cases which do not involve sister-State judgments, (e. g. a judgment of another court of Illinois to which the full faith and credit clause does not apply), it cannot prevail against the express command of the Federal Constitution in a situation where that clause is applicable. The duty of giving full faith and credit presents a **Federal** question governed by Federal law. Illinois is required by the supreme law of the land to give full faith and credit to sister-State judgments and it cannot escape its duty merely by adopting a rule whereunder it **asserts** exclusive jurisdiction to adjudicate claims, notwithstanding in fact and in law, other courts also have jurisdiction to do so. (Titus v. Wallick, 306 U. S. 282, 291, 292; Broderick v. Rosner, 294 U. S. 629.)

It seems quite clear that to allow the judgment as a general unsecured claim will not "impose a different method of distribution" as the Supreme Court of Illinois supposes (T. 85). To allow the judgment as a claim does not affect the **method** of distribution at all, but has the effect, merely, of including the judgment creditor among other creditors entitled to participate in the res.

To allow the judgment as a general unsecured claim will not create a right in favor of the judgment creditor "against the assets," as the Supreme Court of Illinois supposes (T. 84, 85). Like every other unsecured credi-

tor whose claim is allowed, the judgment creditor will only be entitled to receive from the Director in due course of administration, the ratable share of the proceeds of the property of the judgment debtor allocable to his claim.

To allow the judgment as a general unsecured claim will not place the appellant "in a better position in the State to which the judgment is brought than he was in the State in which the judgment was rendered" as the Supreme Court of Illinois supposes (T. 84-85). Although the appellant may be able to realize something upon his judgment in Illinois, and unable to do so in Missouri, full faith and credit cannot be refused for that reason, for, in most cases, the **only** reason for bringing a judgment rendered in one State to another, is that it cannot be collected or enforced in the former.

The decision in this case is aimed at preventing the adjudication of claims by courts of sister States against a company whose property is being liquidated in Illinois. At bottom, the appellant's claim was disallowed in Illinois because he did not "try the cause" of action de novo in Illinois (when the Illinois two-year Statute of Limitations could have been invoked as a complete defense). As a penalty for failure to adjudicate and try his claim before the court of the liquidation, Illinois refuses to give full faith and credit to a sister-State judgment. As a practical matter, the effect of so refusing full faith and credit is to compel the adjudication of claims exclusively before the court of liquidation. (See "Judgment Claims in Receivership Proceedings," by Judge John K. Beach, 30 Yale Law Journal 674.) However, the full faith and credit clause and the Act of Congress "have made that which has been adjudicated in **one** State, res judicata to the same extent in every other" (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438), and so the merits are not open to re-examination.

Illinois has here attempted to give, and by its decision

in this case has given, extra-territorial effect to its rule of practice and to its assertion exclusive jurisdiction to adjudicate claims by refusing full faith and credit to judgments of sister States, and by refusing to permit those judgments to share in the property in its possession. This, we submit, Illinois cannot do. It cannot, properly, assert exclusive jurisdiction to adjudicate claims, to liquidate which it does not have exclusive jurisdiction. Illinois cannot, directly, prevent Missouri from adjudicating matters within its jurisdiction. Illinois cannot, directly, prevent a resident of Missouri from resorting to the courts of Illinois upon an action which accrued to him in Missouri against an unincorporated association of individuals doing business in Missouri under the provisions and burdens and liabilities there assumed, and served with process in Missouri. Illinois cannot, directly, give extra-territorial effect to its assertion of exclusive jurisdiction to adjudicate claims against Chicago Lloyds. Illinois should not be permitted to accomplish, indirectly, by refusing full faith and credit to the Missouri judgment, what it cannot do directly.

The Illinois rule of practice cannot prevail over the constitutional provision and the Act of Congress. That rule is the converse of the "device of **denying** jurisdiction" made use of by this same Illinois Supreme Court which was repudiated by this Court in Kenney v. Supreme Lodge, 252 U. S. 411. Here, Illinois refuses full faith and credit upon the **assertion** that the court of the liquidation has exclusive jurisdiction; there, Illinois refused full faith and credit upon the theory that its courts did not have jurisdiction.

The effect of the rule of exclusive jurisdiction, is precisely the same as that of the New Jersey statute, which was stricken down in Broderick v. Rosner, 294 U. S. 629. In that case, exclusive jurisdiction was asserted on the

basis of an act of the New Jersey legislature. Here exclusive jurisdiction is asserted on the basis of an act of the Illinois legislature, coupled with "the construction placed thereon" by the Court. In either case, the assertion of exclusive jurisdiction is the act of the State, acting through its instruments, the legislative branch in the Broderick case, and the legislative **and** judicial branches here. The language in Titus v. Wallick, 306 U. S. 282, 291-292, is so pertinent that it merits quotation:

> "Obviously (a State) cannot, by the adoption of a particular rule of liability, or of procedure, exclude from its courts such a judgment."

V.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment Upon the Theory That "Full Faith and Credit Requires the Missouri Creditor Claiming Rights Under a Judgment, to Likewise Recognize the Binding Effect of the Illinois Judgment." The Injunction Under Sec. 189 of the Ill. Ins. Code Has No Extra-territorial Effect.

The Supreme Court of Illinois has said (T. 83):

> "Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise **recognize** the binding effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts."

It also has said (T. 84):

> "Under such circumstances it seems logical to hold appellant was bound **under the full faith and credit clause** to **recognize** the effect of this Illinois decree * * *."

It will be observed from this language that, in the view

of the Supreme Court of Illinois, the appellant was required to "recognize" the order directing liquidation, not upon the theory that he was bound thereby as a party to the proceeding in which the order was entered, but "under the full faith and credit clause."

In its general sense, the word "recognize" means to take notice or knowledge of. From the decision in this case, it is evident that the Supreme Court of Illinois had something more than merely taking notice of the order directing liquidation in mind. The opinion does not state precisely, but leaves to inference, what it was that appellant was required to do in addition to taking notice of the order directing liquidation.

With respect to the res, the court of the liquidation has exclusive jurisdiction (Riehle v. Margolies, 279 U. S. 218), and creditors are bound to take notice of the order which results in the distribution of a debtor's property among creditors, **not** on the theory that they are required to give full faith and credit to the order, but because such property, in custodia legis, is beyond the reach of ordinary execution, and the only way creditors can participate therein is from the hands of the Director. The possession, or the title, of the Liquidator is in the nature of a collective execution for the benefit of **all** creditors and, therefore, one creditor ought not be permitted to seize property on his own behalf and so disturb the orderly and equitable distribution thereof among all creditors. The local creditors in another State, whose policy it is to honor the title of the liquidator of a corporation debtor appointed by the State of incorporation, rather than to prefer local creditors, by giving full faith and credit to the order directing liquidation, will not be permitted to reach **property** located in that State, title to which has vested in the liquidator of a legally dissolved insurance corporation. (McDonald v. Pacific State Life Insurance Co., 343 Mo. 1232, 124 S. W. [2d] 1157.) The consequence that a credi-

tor may not reach **property** is consistent with **Riehle v. Margolies**, because the court of the liquidation has exclusive jurisdiction over the res.

The implication of the decision of the Supreme Court of Illinois, however, extends beyond the mere recognition of the **effect** of the order directing liquidation as barring creditors from reaching **proprety** in the control of the court of the liquidation. Since the appellant has made no attempt to reach property, the remarks of that Court must have been directed against something else; and evidently they were directed against the adjudication of claims against the debtor in courts of sister States, for there is nothing else in the case to which they can apply.

Insofar as the opinion holds or implies, that the order directing liquidation operates as a bar to the adjudication of claims against the debtor by courts of sister States, it is inconsistent with the doctrine of Riehle v. Margolies, because, under that case, the court of the liquidation does not have exclusive jurisdiction to adjudicate claims.

The opinion does not distinguish between jurisdiction to administer the res, and jurisdiction to adjudicate claims on their merits; and it seems to be assumed therein that, because the order directing liquidation, operates to bar the sequestration of property, it operates also to bar the adjudication of claims by other courts. The authorities cited, hold only that such an order bars a creditor from sequestering property of the debtor in the possession of a liquidator for the purpose of satisfying his own claim. They do not hold that the order bars the adjudication of claims in the courts of sister States.

The opinion cites McDonald v. Pacific States Life Ins. Co., 343 Mo. 1232, 124 S. W. (2d) 1157 (T. 83), but it was only held there, that a Missouri judgment creditor may not levy on property located in Missouri, title to which had passed to the liquidator of an insurance corporate

debtor, dissolved by the State of incorporation, and who has been designated as its successor in title, it being the policy of Missouri to honor the title of the Liquidator. The Missouri court said, at page 1163:

> "Respondent is not contending for the right to have his claim paid in the order set forth in the Missouri statute. He is attempting to have his claim paid in full in preference to all other claims, even as to administration expenses and taxes."

That case does not pass upon the effect of the order of liquidation as a bar to the adjudication of claims against the debtor in courts other than the court of the liquidation.

There is another complete answer to the theory of the Supreme Court of Illinois that "appellant was bound **under the full faith and credit clause** to recognize the effect of the Illinois decree" (T. 84). (Emphasis added.) Although Section 1 of Article IV does not provide in express words by whom full faith and credit shall be given, it is clear from the purpose of the clause—"to alter the status of the several States as independent foreign sovereigns • • • and to make them parts of a single nation"—and from the historical background, that it is to **States**, not to persons, that the command of that clause is directed. This view is confirmed by the language of the Act of Congress enacted shortly after the adoption of the federal Constitution, that records and judicial proceedings, authenticated in the manner therein provided, shall have such faith and credit in every **court** within the United States," etc. It is the **States**, acting through their agencies of government, not the **persons** in them, who are required to give full faith and credit. No decision we have read, other than the one here under review, and, perhaps, Evans v. Illinois Surety Co., 319 Ill. 105, has sugested that **persons** in their individual capacities, are bound to give

full faith and credit. It is not clear how persons would be able to give full faith and credit.

In this view, it was not encumbent upon the appellant to "recognize" or to give full faith and credit to the order of the court of the liquidation. It evidently is the theory of the Supreme Court of Illinois that, upon the entry of the order directing liquidation, it became the appellant's duty, voluntarily to discontinue the Missouri action. We think not. If the Director supposed that, under the full faith and credit clause, the order directing liquidation was **a bar** to the prosecution of the action pending in Missouri, he ought to have appeared and defended in the Missouri Court, and presented an authenticated copy of that order to the Missouri court and, by appropriate pleading, interposed it as **a bar** to the further prosecution of that action. This he refused to do, but simply withdrew. Had the questions, whether the full faith and credit clause required the Missouri Court or the appellant to "recognize" the order directing liquidation, and whether, because of it, that Court or the appellant ought to refrain from proceeding with the pending action, been presented to that Court, a reviewable decision might have been obtained thereon.

Even if the order directing liquidation had been properly interposed, it is difficult to see how the giving of full faith and credit to it would produce a discontinuance of the Missouri action. Such an order does not **abate** actions pending against the debtor at the time it is entered (1 C. J. S., "Abatement and Revival," 151-153, Secs. 108, 109; 19 C. J. S., "Corporations" 1206, 1220; 12a C. J., "Corporations" 985; Ohio and Miss. Ry. Co. v. Russell, 115 Ill. 52, 57; Chemical Nat'l Bank v. Hartford Deposit Co., 156 Ill. 522, aff'd 161 U. S. 1, 40 L. ed. 595; Ewen v. American Fidelity Co., 261 U. S. 322; Toledo, W. & W. Ry. Co. v. Beggs, 85 Ill. 80; Mercantile Ins. Co. v. Jaynes, 87 Ill. 199; People v. Barnett, 91 Ill. 422, 431; Pine Lake Iron

Co. LaFayette Car Works, 53 Fed. 853; Yenner v. Denver Union Water Works, 40 Colo. 212, 90 P. 623, 629; O'Mara v. Newton & N. W. Ry. Co., 156 Ia. 701, 137 N. W. 942; Pringle v. Woolworth, 90 N. Y. 502; Hatch v. Morosco Holding Co., 19 F. [2d] 766; Evans v. Illinois Surety Co., 298 Ill. 101, 111).

But, even if the assumption is indulged that, upon some theory, the Missouri action ought to have been discontinued, and that the Missouri Court erred in entering the judgment, that judgment, even if erroneous, would not be **void.** Courts of Illinois cannot sit in review of the Courts of Missouri. The judgment is final and, however erroneous, is entitled to full faith and credit. Illinois cannot refuse full faith and credit to it in retaliation for the **supposed** failure of Missouri to give full faith and credit to the order directing liquidation. If one State were to be permitted to refuse full faith and credit to a judgment of another, in retaliation for a previous refusal by the latter to give full faith and credit to a judgment of the former—perhaps in unrelated matters—there might be an early end to the full faith and credit clause.

The language in the opinion has the flavor of the doctrine of res judicata. In addition to the excerpts quoted at the beginning of this Point, the Supreme Court of Illinois says:

> "No case has been called to our attention which gives to the judgments of one State the force and effect that it has therein as against a prior judgment in another State, under which possession of property has been taken by the officer of the latter court" (T. 82).

Manifestly, the order directing liquidation did not adjudicate, and does not purport to be an adjudication of appellant's claim against Chicago Lloyds. The matter of appellant's claim was not then before the court. There-

fore, the order directing liquidation could not be res judicata of appellant's claim, and the mere fact that the order directing liquidation was entered at a date earlier than the Missouri judgment, has no significance.

On the other hand, the Missouri judgment was a determination of appellant's cause of action against "Chicago Lloyds." That judgment was res judicata of appellant's cause of action. So, if the Missouri court, upon the trial of the appellant's case, had rendered judgment **against** him, instead of in his favor, and if appellant, ignoring that judgment, had filed a claim for the same injury in the liquidation proceeding, there can be no doubt that the Director might have successfully interposed **that** judgment, against the appellant as a bar to a **second** hearing on the same claim (Edwards v. Keller [Tex. Civ. App.], 133 S. W. [2d] 823). By parity of reasoning, the Director is not entitled to demand that the appellant try his cause de novo before the court of the liquidation (Magnolia Petroleum Co. v. Hunt, 320 U. S. 430).

Although it is stated in the statement of the facts contained in the opinion, that "after the order of the Superior Court of Cook County appointing a liquidator was entered, an injunction was issued restraining the claimant (the appellant) and others from prosecuting claims **(of which,"** the Supreme Court added—although the Record contains not a single bit of evidence to sustain that addition—**"claimant concedes he had notice)** * * * " (T. 74), the Supreme Court of Illinois held that the appellant was bound by the injunction, **as a party to the proceeding.** In fact, the appellant was not a party, and was beyond the territorial limits of Illinois, and so not amenable to its process, and actually had **no** notice that an injunction had been entered (T. 52); and the court of the liquidation did not have jurisdiction over him, or power to restrain him from prosecuting the Missouri action (Ewen v. American

Fidelity Co., 261 U. S. 322; The Western Union Tel. Co. v. P. & A. Tel. Co., 49 Ill. 90, 94; Royal League v. Kavenaugh, 233 Ill. 175; Harris v. Pullman, 84 Ill. 20; see Illinois Life Insurance Co. v. Prentiss, 277 Ill. 383, 387).

In Ewen v. American Fidelity Co., 261 U. S. 322, a judgment was obtained against the Illinois Surety Co., the liquidation of whose property was the subject of the litigation in Evans v. Illinois Surety Co., 319 Ill. 105. That judgment was obtained in disregard of the same order, prohibiting the receiver from defending suits in other jurisdictions discussed in the **Evans** case. The Supreme Court of Illinois, in the Evans case, held that the court of the liquidation had exclusive jurisdiction to adjudicate claims, and refused full faith and credit to the judgment in that case. BUT this Court in the Ewen case held that the judgment in that case was valid, saying that the order "imposed no personal obligation on (the plaintiff in the action on the foreign jurisdiction), **as he was not within the jurisdiction of the Illinois Court.**"

The injunction did not purport to enjoin the prosecution of suits already instituted. It restrained the obtaining of "preferences, judgments, attachments or **other like liens,**" and the making of any "levy against Chicago Lloyds, or its property, assets, books or records" (T. 4). In short, it was an injunction to protect the res, not to restrain the adjudication of unsecured claims, in a suit pending at the time it was entered. The Court of the liquidation had no authority, under the Illinois Insurance Code, to restrain the prosecution of pending actions, judgments in which could not become liens against the res (Ill. Rev. Stat., Ch. 73, Par. 801).

Not only did the court of the liquidation lack power to enjoin the appelant from obtaining a non-lien judgment, and jurisdiction over the appellant, but there has been no adjudication that the appellant has violated the injunction (Andrews v. Knox, 70 Ill. 65).

Even if the appellant had violated an injunction, binding upon him, by obtaining a judgment, the judgment would not be void (Platt v. Woodruff, 61 N. Y. 378, 381; Geddes v. Wayne Circuit Judge, 151 Mich. 122, 114 N. W. 874; High on Injunctions [4th ed.], Secs. 46, 103; 28 Am. Jur., "Injunctions," 392; 32 C. J., "Injunctions," 85; and see Boettcher v. Howard Engraving Co., 389 Ill. 75, 79).

Moreover, in point of fact, it was never "conceded" (as stated in the opinion, T. 74) that the appellant had notice or knowledge of the injunction. It was conceded only that he had notice of Liquidator's Exhibit No. 1 (T. 60-61)—the notice to file his claim—in which not one word concerning the **injunction** is contained. At the hearing before the Master in Chancery, counsel for the Director expressly requested that the right to produce evidence, showing that appellant had notice of the injunction, be reserved (T. 24, 52). But at no time did he produce or offer any proof that the appellant had such notice.

VI.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment Upon the Theory That It Gave the Appellant "No Rights."

The Supreme Court of Illinois states that it had held, in Evans v. Illinois Surety Co., 319 Ill. 105, that such a judgment gave the creditor no rights, and that Missouri "has reached substantially the same result" in McDonald v. Pacific State Life Ins. Co., 343 Mo. 132, 124 S. W. (2d) 1157 (T. 76).

We do not so read either case. In the Evans case it is said at page 110 of the report: "If the plaintiff in such an action desired a judgment against the company for some purpose other than the right to share in the assets held by the receiver he might proceed. • • • That judgment bound only the company and not the receiver of its assets."

And at pages 112 and 113 it is said: "So far as McKegney (the judgment creditor) and the surety company (the judgment debtor) are concerned, the judgment is entitled to full faith and credit under the Constitution of the United States, but the constitutional provision has no application to the receiver * * *." Thus, according to that case, although the court of the liquidation is not bound to give effect as against the res to the judgment, either upon principles of comity or under the full faith and credit clause, the judgment debtor is bound by the judgment even though the receiver was not. In Point VII we shall demonstrate that full faith and credit cannot be refused upon the theory that the "constitutional provision has no application to the receiver." Under this point it suffices to say that the Evans case is not authority for the proposition that the Missouri judgment gave the appellant no rights.

The Missouri cases we have cited clearly demonstrate that a judgment creditor has rights by virtue of his judgment. "A judgment is a debt, a property right * * *" (Vitale v. Duerbeck, 338 Mo. 556, 571, 92 S. W. [2d] 691).

An examination of the McDonald v. Insurance Co. case shows that the Supreme Court of Missouri did not decide in McDonald v. Pacific State Life Ins. Co., 343 Mo. 1232, that the judgment in that case gave the judgment creditor no rights. It decided only that a Missouri judgment creditor could not, or did not, have a "right" to levy on part of the res located in Missouri, title to which was vested in the liquidator appointed by the State of incorporation. The language of that case suggests that the judgment creditor did have rights by virtue of his judgment, but that he would not be permitted to enforce them against property which no longer was under the control of the judgment debtor. It certainly was not suggested in that case that the judgment was a nullity.

The Missouri judgment was an adjudication that Chicago Lloyds was indebted to the appellant in the amount

of the judgment. The Missouri Court ordered that a writ of execution issue (T. 35). Can it be doubted that in case Chicago Lloyds was rehabilitated under the provisions of the Illinois Insurance Code, after the order authorizing the Director to take possession was entered, that the judgment could be enforced?

VII.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment on the Theory Stated in Evans v. Illinois Surety Co., 319 Ill. 105, "That the Constitutional Provision Has No Application to the Receiver."

As stated, in Point IV, the **Evans** case decides that, on principles of comity, Illinois would not allow the sister-State judgment creditor to share in the property which was in the possession of the Illinois court of chancery; and that although the sister-State judgment was entitled to full faith and credit **as against the debtor**, "the constitutional provision has no application to the **receiver**, who was not a party to the action nor bound by the judgment." It will be observed that the theory upon which full faith and credit were refused in the **Evans** case, is not advanced in the opinion in **this** case.

Full faith and credit cannot be refused upon the theory "that the constitutional provision has no application to the receiver." The receiver cannot be regarded as a stranger. With respect to a stranger to the judgment, it would be more apt to say that the **judgment** has no application to him or imposes no obligation upon him, rather than to say that the full faith and credit clause has no application to him. But a receiver is generally regarded as the representative of the debtor, especially where he succeeds to the debtor's property for purposes of distributing it among creditors.

Considering the receiver as the representative of the

debtor, he is in privity with the debtor [Riehle v. Margolies, 279 U. S. 218; Freeman on Judgments (1925 ed.), Vol. 1, p. 1079, sec. 501; Black on Judgments (1891 ed.), Vol. 2, sec. 534; Bigelow on Estoppel (1890 ed.), p. 142; 34 Corpus Juris, "Judgments" 1004; Schafer v. Robillard, 370 Ill. 92, 100; Towle v. Quante, 246 Ill. 568, 573; Ferriman v. Gillespie, 250 Ill. 369, 371] and so is bound, on principles of estoppel, by a judgment against the debtor. He is estopped from "re-agitating" questions which have been decided between the creditor and the debtor by a court of competent jurisdiction. [Riehle v. Margolies, 279 U. S. 218, 228; Hatch v. Morosco, 19 F. (2d) 766.

If the receiver is regarded as the representative of the court [High on Receivers (1910 ed.), sec. 2; 53 C. J., "Receivers," p. 143, sec. 144; p. 144, sec. 175; p. 139, sec. 167; p. 349, sec. 564; Wiswall v. Kunz, 173 Ill. 110, 111; Nevitt v. Woodburn, 190 Ill. 283, 289; McNulta v. Lockridge, 137 Ill. 270; Sneeden v. Ind. Com., 366 Ill. 552, 559], he may act only when directed by the court appointing him. He is but a stakeholder, not a party in interest or a litigant. He is the arm of the court, holding the property of the debtor for the court pending the outcome of the litigation.

Where the purpose of the litigation is to distribute the debtor's property among creditors, the receiver, on order of the court appointing him, will do so. The receiver is not a party to the litigation. He is not a party in interest. He is neither a creditor nor the debtor. It becomes the duty of the court to ascertain who are creditors of the debtor to whom distribution shall be made; and, in that connection, it is the duty of the court, as the instrument through which the State acts, to give full faith and credit to a sister-State judgment obtained by a creditor.

The court cannot escape that duty by hiding behind its own receiver—by the mere assertion that the constitutional provision has no application to the receiver, for that is

tantamount to asserting that the constitutional provision has no application to the **court** itself. Such a conclusion would nullify the full faith and credit clause, and also nullify Article VI of the Constitution and the provisions of the Fourteenth Amendment thereto.

It is, of course, possible to distinguish the Evans case upon the superficial ground that there the receiver was appointed by a court of chancery, while here the liquidator is an administrative officer; there the debtor was a corporation, here it is an unincorporated association, and on other grounds as well. None the less, the decision that the full faith and credit clause has no application to the receiver is not sound.

VIII.

Full Faith and Credit Cannot Be Refused to the Missouri Judgment on the Theory That the Proceeding Is Statutory.

The Supreme Court of Illinois (T. 75) contended that full faith and credit ought to be refused to the Missouri judgment, because the liquidation proceeding is conducted in accordance with the provisions of the Illinois **statutes** governing liquidation of insurance companies. Therefore by this contention it is obvious that "there is drawn in question the validity of said statutes * * * on the ground of their being repugnant to the Federal Constitution."

We contend that if the Illinois Insurance Code had expressly provided that full faith and credit should not be given to sister-State judgments adjudicating claims against the debtor, it would have been in direct conflict with said constitutional provisions.

The fact that the liquidation is conducted in accordance with a statute is of itself no sufficient reason for refusing full faith and credit. The legislature of a State cannot

enact a law that full faith and credit shall not be given as required by the Federal Constitution.

Said Illinois Code, however, does not provide expressly that full faith and credit shall not be given to sister-State judgments adjudicating claims. It has been given that meaning by the decision of the Supreme Court of Illinois in this case. The theory of the decision is (T. 77), that section 191 of the Code vests title to all of the assets wherever situated of an unincorporated association having no charter, and not a corporation chartered by the State of Illinois merely because that association (Chicago Lloyds) was licensed to write insurance in Illinois, in the Director; that therefore the court of the liquidation has exclusive jurisdiction over the res and also exclusive jurisdiction to adjudicate claims against the debtor; and that therefore the court of the liquidation is not required to give full faith and credit to the judgments of sister States adjudicating claims against that association.

The decision of the Supreme Court of Illinois fixing the meaning of the Code must be accepted as though such meaning had been specifically expressed in the Code. The meaning given the Code becomes a part of it and is to be read as though in the text of the Code (Knights of Pythias v. Meyer, 265 U. S. 30, 32, 34, 68 L. ed. 885).

The only cases cited in support of the theory, that full faith and credit need not be given because the proceeding is statutory, are those in which the judgment of the sister State in question was a nullity because the debtor was a corporation, and had been dissolved by the state creating it before the judgment was rendered. (Martyne v. American Union Fire Insurance Co. of Philadelphia, 216 N. Y. 183, 110 N. E. 502; Pendleton v. Russell, 144 U. S. 640.) The principle of these cases does not apply to a judgment against a debtor which has not been dissolved. (Willits v. Waite, 25 N. Y. 577, 581; Pringle v. Woolkorth, 90 N. Y. 502; Sigua Iron Co. v. Brown, 85 N. Y. S. 141, 142; Taylor v. Gray, 59 N. J. E. 621, 629-630.)

In Pringle v. Woolworth, 90 N. Y. 502, the court said:

"The case is analogous to that of a suit brought against a debtor for the recovery of a debt, after a general assignment of his property made to a trustee for the benefit of creditors. The contract between the debtor and creditor would still subsist, and could be enforced by suit against the debtor, and a **judgment between the original parties on the contract would necessarily establish the existence and extent of the obligation between them, as well as against a trustee of his estate for the benefit of creditors.** • • • And in this case the judgment against the company, established **as against the receiver** the amount of the debt or claim of the plaintiff upon the policy, **and the receiver had no right to re-agitate questions litigated in the action against the company, or to interpose any defense on the merits which might have been taken in the action in which the judgment was rendered.** The receiver holds the property and estate of the corporation as the officer of the court, for the purpose of distribution under the direction of the court among creditors and stockholders and • • • **the receiver and the other creditors are bound thereby.** If any reason existed to question the judgment against the company, it was the duty of the receiver to have applied to the court rendering it, to re-open the judgment and to be permitted to defend." (Emphasis supplied.)

In Sigua Iron Co. v. Brown, 68 N. Y. S. 141, 142, the court said:

"A corporation continues in esse until it is formally adjudged to have been dissolved, and it may sue and be sued in its name, notwithstanding the appointment of a receiver, and a judgment so obtained is valid and binding both against the corporation **and its receiver** (Gluck and Becker on Receivers, Secs. 3 and 4)." (Emphasis supplied.)

In Taylor v. Gray, 59 N. Y. E. 621, 629-630, the court said:

"It is settled that unless there is something in statute or decretal order tantamount to dissolution, a pending action against a corporation may regularly proceed, notwithstanding an adjudication of insolvency and the appointment of a receiver to wind up its affairs and distribute its assets among creditors and stockholders, and this is true although the action is in the courts of another State than that of the home jurisdiction; and, **under the federal constitution, the judgment in the action will be conclusive upon everyone.**" (Emphasis supplied.)

Furthermore, the rule in Illinois seems to be that a judgment against a dissolved corporation—much less against an undissolved unincorporated association—is not void (Commercial Trust Co. v. Mallers, 242 Ill. 50).

The Code does not, expressly provide that the court of the liquidation shall have exclusive jurisdiction to adjudicate claims against the debtor. The powers of the court of the liquidation are limited—much narrower than those generally exercised by a court of chancery. The Supreme Court of Illinois held in People v. Niehaus, 356 Ill. 104, 109, that the court of the liquidation "acts only within the scope defined by the terms of the statute." It was also held in that case that the court of Liquidation had no power to appoint a liquidator. (The statements in the opinion that the liquidator "was appointed by the court," are erroneous [T. 73 and 74]). The court can only find that sufficient cause for liquidation exists and the Director, an executive officer, not a judicial officer, takes possession. In this case the finding made by the court was that Chicago Lloyds did not have $500,000 surplus, as required by the Illinois law, to continue business in Illinois, but only had $304,187.90 surplus over liabilities (T. 2). It is he who has control over the res. It is difficult to reconcile the decision, that the powers of the court given it by the statute are so limited that it cannot even appoint a liquidator, with the conclusion in this case that,

not only does that court have exclusive jurisdiction over the res, but over the adjudication of claims as well.

The Code not only fails to confer exclusive jurisdiction to adjudicate claims, but expressly provides for the adjudication of certain claims in **other** courts (Ill. Rev. Stat., Ch. 73, Par. 821 (4). In People v. Fort Dearborn Ins. Co., 307 Ill. App. 194, the Appellate Court of Illinois gave effect to a judgment of another court adjudicating a claim and ordering it to be allowed as a claim in the liquidation proceeding.

It has been suggested that insurance companies are excluded from the operation of the National Bankruptcy Act (Tr. 76 and 77). That affords no reason for giving the statute of a State nation-wide operation. The Congress has the power "to establish * * * uniform laws on the subject of bankruptcies throughout the United States" (Constitution, Art. I, Sec. 7). The power of the States, even in the absence of legislation by Congress, is limited to their territorial boundaries. Although Congress may provide that claims against a bankrupt may be liquidated only in courts of bankruptcy, the legislature of a State may not provide that claims against a debtor which have been reduced to judgments in the courts of sister States shall not receive full faith and credit. Nor can one State limit the jurisdiction of the courts of another.

The earlier Bankruptcy Acts did not provide that Courts of Bankruptcy shall have exclusive jurisdiction to liquidate claims against the bankrupt, and so it has been held, under the Bankruptcy Act of 1867, that a judgment of a State court established conclusively in bankruptcy the existence and amount of the debt provable against the Bankrupt estate (Norton v. Switzer, 93 U. S. 355, 363-364 [cited in Riehle v. Margolies at page 226]).

At most, the provisions of the Illinois Code could have the effect of vesting in the Director of Insurance of the State of Illinois title to the property—even the property

located in other States—of a debtor corporation which was created by Illinois. It does not purport to confer exclusive jurisdiction to adjudicate claims against the debtor upon the court of the liquidation; and if it contained a provision purporting to do so, it would be ineffective to oust other courts of their jurisdiction. It does not provide that the court of the liquidation shall not give full faith and credit to sister-State judgments. The Supreme Court of Illinois has read into the provision that title to the property of the debtor shall vest in the Director, the meaning that the court of the liquidation shall have exclusive jurisdiction to adjudicate claims and shall not be required to give full faith and credit to sister-State judgments adjudicating claims against the debtor.

So construed, the Code is in conflict with said full faith and credit clause, and with the Act of Congress, and with the decisions of this Court.

B.

The obligation to guard and force every right secured by the Constitution of the United States rests on the state courts equally with the Federal Courts.

Smith v. O'Grady, 312 U. S. 329, 95 L. E. 859.

C.

The same is true of the Fourteenth Amendment. It, like the original Constitution, as provided by Article VI, is the supreme law of the land, and therefore Illinois could not make or enforce any law which abridged the privileges or immunities of appellant as a citizen of the United States. Furthermore, appellant was deprived of due process of law. He was never served with process in Illinois or in Missouri, never voluntarily entered an appearance or actually received notice of the injunction, yet the Supreme Court of Illinois held that he was bound by the in-

junction which was based upon its interpretation of the scope of Section 189 of the Illinois Insurance Code, and which injunction is set out in the language of the statute.

It would be a work of supererrogation to again argue these points at any length. They have been argued heretofore in Point A. It is obvious that these two constitutional provisions, together with Sections 1 and 2 of Article IV have been violated, in the construction, interpretation and effect given to the Illinois Insurance Code by the courts of Illinois.

CONCLUSION.

A.

In conclusion, it is obvious that "Chicago Lloyds" continued to remain capable to being sued despite the entry of the decree of February 9, 1938, that the director take possession and liquidate their property, and a judgment rendered in Missouri, after the entry of such an order on a suit already pending and at issue, is not void, and is entitled to the protection of Sec. 1 of Art. IV of Constitution.

B.

Chicago Lloyds continued to remain capable of being sued after its certificate of authority (or license) to transact business in Illinois had expired, irrespective of whether it was renewed or not, either in Illinois or in any state where service could be obtained.

C.

The Missouri judgment was valid and binding and was entitled to receive full faith and credit in Illinois.

D.

The fact that the liquidation proceedings in Illinois were statutory, did not confer exclusive jurisdiction upon the Illinois courts to **adjudicate** claims arising in other states and already pending in the form of suits at the time of the liquidation order, where the company is an unincorporated association which has not been dissolved and declared "dead."

E.

The director of insurance of Illinois could not, by operation of law, under any legal interpretation of the Statutes of Illinois, become vested with the title to any property of Chicago Lloyds situated in Missouri. Even if he could, it would not follow as an **incident** of that title, that claims against "Chicago Lloyds" could not be adjudicated in competent courts of Missouri. Under the said Insurance Code no statutory provision is made (or could be made) for the "dissolution" of either a partnership or of any voluntary association of individuals, unincorporated or of "joint adventurers"; said Insurance Code only provides, insofar as the power to dissolve is concerned, that a **corporation** (if it be one formed under the laws of the State of Illinois), may, by inserting a special prayer in the petition of the proceedings, etc., be dissolved (Sec. 196 of said Code).

The general laws and decisions of the courts of last resort of Illinois provide and hold (a) that even the appointment of a receiver for an Illinois corporation, with authority to wind up its affairs, does not work a "dissolution" and abate pending actions against it, and such pending actions may be prosecuted to judgments. Evans v. Ill. Surety Co., 319 Ill. 105, 1. c. 110.

The withdrawal of a partner from a partnership merely terminates, but does not dissolve, the partnership (citing

cases); and even the termination of a partnership does not terminate its existence. It continues to exist until the winding up of the partnership affairs constitutes its dissolution.

We regret that we have been compelled to expatiate to the extent set out under the Argument on full faith and credit, but the effect of the Illinois decision is of the utmost importance throughout the United States, and the decision of this court will have a far-reaching effect upon the constitutional questions herein presented.

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APPENDIX.

Missouri Statutes Involved (R. S. Mo. 1929).

"**Sec. 728** (R. S. Mo. 1929): **Writs, how served on persons, foreign corporations and voluntary or unincorporated associations or organizations, and how voluntary or unincorporated associations or organizations may be sued.** A summons shall be executed * * * Seventh, where any action shall be commenced against any voluntary or unincorporated association or organization it may be sued in the name it has selected or by which it is known or uses and summons may be served on it by delivering a copy of the writ and petition to the president or other officer, agent or employe, in charge of any office or place of business * * * and when had in conformity herewith shall be deemed personal service against such voluntary or unincorporated association or organization and authorize the rendition of a general judgment against it. * * *"

"**Sec. 729** (R. S. Mo. 1929). **Voluntary or unincorporated association or organization defined.** For all intents and purposes of this article, the term 'voluntary or unincorporated association or organization,' referred to in the seventh subdivision of section 728, shall apply to and be construed to include common law trusts, or associations operating under a declaration of trust."

"**Sec. 864** (R. S. Mo. 1929): **What within two years.** Within two years: An action for libel, slander, assault, battery, false imprisonment or criminal conversation * * * shall be brought within two years from the date of the act of neglect complained of."

"**Sec. 5892** (R. S. Mo. 1929): **Insurance company required to procure certificate before transacting business in state.** No company shall transact in this state any insurance business unless it shall first procure from the

superintendent of the insurance department of this state a certificate stating that the requirements of the insurance laws of this state have been complied with authorizing it to do business; a copy of which certificate, certified by the superintendent, and issued only upon the request of the president or secretary, or other chief officer of the company, or of a general agent of the company for this state, notice of whose appointment has been filed in the department, shall be held by every agent or solicitor for such company doing business * * * Every such company shall be required to procure annually for the use of its agents and solicitors, copies of the renewed certificate of authority provided for by law. * * *"

"**Sec. 5893** (R. S. Mo. 1929): **All companies to conform to this law.** No individual or association of individuals, under any style or name, shall be permitted to do the business mentioned in this chapter within the state of Missouri, unless he or they shall first fully comply with all the provisions of the laws of this state governing the business of insurance * * *"

"**Sec. 5894** (R. S. Mo. 1929): **Process against foreign companies, appointment of superintendent to receive or accept service of.** Any insurance company not incorporated by or organized under the laws of this state, desiring to transact any business by any agent or agents in this state, shall first file with the superintendent of the insurance department a written instrument or power of attorney, duly signed and sealed, appointing and authorizing said superintendent to acknowledge or receive service of process issued from any court of record, justice of the peace, or other inferior court, and upon whom such process may be served for and in behalf of such company, in all proceedings that may be instituted against such company, in any court of this state or in any court of the United States in this state, and consenting that service of

process upon said superintendent shall be taken and held to be as valid as if served upon the company, according to the laws of this or any other state. Service of process as aforesaid, issued by any such court, as aforesaid, upon the superintendent, shall be valid and binding and be deemed personal service upon such company, so long as it shall have any policies or liabilities outstanding in this state, although such company may have withdrawn, been excluded from or ceased to do business in this state. * * *"

Illinois Statutes Involved (R. S. Ill. 1937).

"**Sec. 15** (Chap. 83, Rev. Stat. Ill. 1937): **Personal Injuries, penalties, etc.** Actions for damages for an injury to the person or for false imprisonment, or malicious prosecution, or for a statutory penalty, or for abduction, or for seduction, or for criminal conversation, shall be commenced within two years next after the cause of action accrued."

"**Sec. 87** (Rev. Stats. Ill. 1937): **Certificate of Authority.** It shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. All certificates of authority issued under the provisions of this Article shall terminate on the thirtieth day of June next following the date of issuance and may be renewed upon compliance with this Code."

The Illinois statutes, the validity of which is involved herein, are as follows (Chap. 73, Art. XIII, Ill. R. S. 1937):

"Section 187 (Par. 799) '**Scope of Article.**' This article shall apply to every company which is doing or attempting to do, or which is representing that it is doing an insurance business in this State * * *"

"Section 188 (Par. 800) **Grounds for Rehabilitation and Liquidation of Domestic Company.** Whenever any domestic company

(a) is insolvent; or

(b) has refused to submit its books, * * * to the Director of Insurance * * *;

(c) has neglected or refused to observe an order of the Director to make good within the time prescribed by law any deficiency, whenever its capital, if a stock company, or its required surplus, if a company other than stock, shall have become impaired;"

Then follows subsection (d) relating to illegal transfer of its property;

"(e) is found to be in such condition that its further transaction of business would be hazardous to its policyholders, or to its creditors, or to the public; or

(f) has violated its charter or any law of this State or its corporate powers; or

(g) that an officer has refused to be examined under oath touching its affairs;

(h) cannot meet the requirements for organization as required by law;

(i) has ceased to transact insurance business for one year;

(j) has commenced or attempted a voluntary liquidation or dissolution;

(k) is a party plaintiff or defendant in any proceeding for the appointment of a Receiver, custodian, liquidator or rehabilitator for such company;

(l) consents by a majority of its directors, stockholders or members; or

(m) has not organized and obtained a certificate authorizing it to commence the transaction of its business within the period of time prescribed by the sections of this Code, under which it is or proposes to be organized; or

(n) has refused or neglected to pay any valid final judgment in thirty days,

"Then the Director shall report any such case to the Attorney General of this State whose duty it shall be to apply forthwith * * * for an order to rehabilitate or liquidate—and for an order to show cause why an order to rehabilitate or liquidate should not be entered as provided by this article."

"Section 189 (Par. 801) **Injunction.** The court shall have jurisdiction, at any time after the filing of the petition to issue an injunction restraining such company and its officers, agents, directors, employees and all other persons from transacting any company business * * *. The Court may issue such other injunctions or enter such other orders as may be deemed necessary to prevent interference with the proceedings, or with the Director's possession and control or title, rights or interests as herein provided or to prevent interference with the conduct of the business by the Director, and may issue such other injunctions or enter such other orders as may be deemed necessary to prevent waste of assets or the obtaining of preferences, judgments, attachments or other like liens or the making of any levy against such company or its property and assets while in the possession and control of the Director."

"Section 190 (Par. 802) **Order of Rehabilitation or Liquidation.** On the return of such order to show cause and after a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists

for rehabilitation or liquidation and directing the Director to take possession of the property, business and affairs of such company and to rehabilitate or liquidate the same as the case may be. * * *"

"Section 191 (Par. 803) **Title to Property of Company.** The Director and his successor and successors in office shall be vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. The filing or recording of such order in the office of the Recorder of Deeds or the Registrar of Titles in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted."

"Section 193 (Par. 805) **Duties of Director as Liquidator—Sales—Notice to Creditors—Reinsurance.**" This section contains four subdivisions, the first providing "that upon the entry of an order directing liquidation the Director shall immediately proceed to liquidate the property, business and affairs of the company"; the second providing that "He may, subject to the approval of the Court, sell or otherwise dispose of the real and personal property * * *"; the third providing that "He shall as soon as may be conveniently possible, give notice to all creditors who may have claims against the company, as revealed by the records of the company, to present the same"; the fourth providing for reinsurance of policy risks.

"Section 194 (Par. 806) **Rights and Liabilities of Creditors Fixed Upon Liquidation.** The rights and liabilities of the company and of its creditors, except those holding contingent claims, and of its policyholders, stockholders or members and of all other persons interested in its assets shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing

liquidation. The rights of claimants holding contingent claims on said date shall be determined as hereinafter provided."

"Section 196 (Par. 808) **Order of Dissolution.** If the company against whom the petition for liquidation is filed be a corporation and the petition prays for dissolution of such company, the court shall have jurisdiction either before or after final liquidation of the property, business and affairs of such company, after service of an order to show cause as aforesaid and a full hearing, to enter a decree dissolving such company. The Court may likewise, regardless of whether an order of liquidation is sought or has been obtained, upon proper petition by the Director, order dissolution of a company where it has failed to qualify for a certificate of authority authorizing it to commence the transaction of its business, or where a company has no assets and no means for payment of liabilities."

"Section 208 (Par. 820) **Time to File Claims Against Insolvent Company.** (1) If upon the entry of an order directing the liquidation of a domestic company, or at any time thereafter during such liquidation proceeding, such company shall not be solvent, the Court shall after such notice and hearing, as it deems proper, make an order declaring such company to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the Director shall notify all persons who may have claims against such company, as revealed by the records of the company, and who have not filed proper proofs thereof, to present the same to him at a place specified in such notice within such time as may be fixed by order of the court. The last day for filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court. The Director shall also cause a notice specifying the last day for the filing of claims to be published once each week for three

successive weeks in a newspaper published in the county where such proceedings are pending, and in such other newspapers as he may deem advisable.

"(2) Proofs of claim on good cause shown may be filed subsequent to the date specified, but, no such claim shall share in the distribution of assets until all allowed claims, proofs of which have been filed before said date, have been paid in full."

ARTICLE V. **Lloyds.**

Sec. 86 (Par. 698). **Scope of Article.** (1) This article shall apply to all individuals and aggregations of individuals transacting an insurance business in this state through an attorney-in-fact under the name of Lloyds or under a Lloyds plan of operation. Such individuals and aggregation of individuals are referred to in this Code as "Lloyds".

(2) As used in this Code "Domestic Lloyds" means a Lloyds having its home office in this State; "Foreign Lloyds" means a Lloyds having its home office in any State of the United States; and "Alien Lloyds" means a Lloyds having its home office or principal place of business in any country other than the United States.

Sec. 89 (Par. 701). **Principal Office of Attorney-in-Fact.** The principal office of the attorney-in-fact of a domestic Lloyds shall be maintained in this State.

Sec. 91 (Par. 703). **Declaration of Domestic Lloyds.** It provides that the attorney-in-fact for underwriters who desire to form a domestic Lloyds, under this Article, shall sign and acknowledge a declaration in duplicate, and set forth the name of the attorney-in-fact, the location of the office of the attorney-in-fact, the names and addresses of the individual underwriters, the class or classes of insur-

ance which said Lloyds proposed to transact, and "such other provisions not inconsistent with law which may be deemed by the attorney-in-fact or the underwriters to be necessary or advisable."

Sec. 92 (Par. 704). **Documents to Be Delivered to Director.** It provides that upon the execution of the declaration by the attorney-in-fact for a domestic Lloyds, there shall be delivered to the director duplicate originals of the declaration, a copy of the power of attorney-in-fact, an instrument authorizing the service of process on the director, provided for in Section 630 of this Chapter, and all the forms of insurance policies or contracts proposed to be used.

Sec. 94 (Par. 706). **Approval of Documents.** This section provides that the documents and papers so delivered to the Director may be approved or disapproved by the Director, and that if they are approved by the Director the Director shall place them on file in his office and shall endorse upon a duplicate original his approval, with the month and day and year of such approval, and deliver it to the attorney-in-fact.

Sec. 96 (Par. 708). **Issuance of Certificate of Authority.** This section provides that when the Director has been notified that the underwriters have deposited a sum not less than the minimum admitted assets required by Section 711, he shall conduct an examination of such Lloyds, and if he finds that the organization has been completed and all other requirements of this Code have been met, he shall issue to such Lloyds a certificate of authority to transact the kind or kinds of business specified in the declaration.

Sec. 99 (Par. 711). **Minimum Admitted Assets Required of Domestic Lloyds.** This section provides that each domestic Lloyds shall at all times keep and maintain in this

State admitted assets including the deposits of underwriters required by Section 709 of this Chapter, and that if such Chicago Lloyds is writing all or any kind of insurance enumerated in either Class 2 or Class 3 of Section 616 of this Chapter, it must maintain a surplus of not less than $500,000.

Sec. 101 (Par. 713). **Restrictions Upon Domestic Lloyds.** It provides that a domestic Lloyds shall not change its name, establish branches, amend or change its declaration, without the approval of the Director, and that it shall maintain the assets required by this Article in cash or in investments permitted by this Code. Shall maintain in this State a principal office of its attorney-in-fact, and notify the Director of any change in underwriters, and notify the Director of any change of attorney-in-fact.

Sec. 102 (Par. 714). **Restrictions Upon Foreign Lloyds.** This section provides that each foreign Lloyds authorized to transact business in this State shall maintain cash and securities, including the deposits required by this Article for domestic Lloyds, doing the same kind of business, shall file with the Director an authenticated copy of its power-of-attorney and an authenticated copy of the trust agreement or other agreement under which deposits made by underwriters are held. Notify the Director forthwith of any amendment to its power-of-attorney, or change in its name or change of attorney-in-fact, or of the address of the attorney-in-fact; also file with the Director a list of the names and addresses of all the underwriters, the description of the cash and securities deposited in trust by each underwriter.

Sec. 103 (Par. 715). **Alien Lloyds.** This section provides that each Alien Lloyds authorized to transact business in this State shall maintain in this state or in any state of the

United States, in which they are authorized to transact business, cash or securities of a character comparable to the requirements of Section 737 of this Chapter, required by this Article for domestic Lloyds doing the same kind of business. Make deposits of underwriters in this State in accordance with the requirements imposed upon domestic Lloyds, file with the Director an authenticated copy of the power-of-attorney and copy of the trust agreement under which deposits made by the underwriters are held. Notify the Director forthwith of amendments to its power-of-attorney and of any change in the name or change of attorney-in-fact; and file a verified statement setting forth the names and addresses of all underwriters of such Lloyds and a description of the cash and securities deposited in trust by each underwriter.

Sec. 197 (Par. 809). **Grounds for Conservation of Assets of Foreign or Alien Company.** It provides that whenever any of the grounds for rehabilitation or liquidation of domestic companies, specified in Clauses A, B, C, D, E, F, G, J, K and N of Sec. 800 of this Chapter, arise or exist with reference to any foreign or alien company, authorized to transact the business of insurance in this State, and having assets in this State, the Director may proceed for the filing of a petition as provided in this Article against domestic companies, for an order directing such foreign or alien company to show cause why the Director should not take possession of its assets in this State and conserve said assets for the benefit of its creditors and the interests of its policyholders, creditors, members, stockholders or the public may require. And by said section it is provided that the court shall have jurisdiction to issue injunctions and to issue such other orders as it may deem necessary, as is provided in the case of a petition against a domestic company so far as such injunctions or orders may apply to such foreign or alien company; and if the court finds that

sufficient cause for conservation exists, it shall direct the Director to take possession of the property, business and affairs of the company and to conserve the same; and that upon the entry of such order, the Director shall forthwith take possession of the property, business and affairs of such foreign or alien company, and conserve the same; and he shall retain such possession until, on the petition either of the Director by the Attorney General, or of such foreign or alien company, or its receiver or any one in charge of the property, business and affairs of such foreign or alien company, in its domiciliary state or country, the court, after a full hearing, shall find that the ground for such order finding cause for conservation has been removed.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946.

No. 62.

CHARLES B. MORRIS,
Appellant,
vs.
PAUL F. JONES, Director of Insurance of the State of Illinois.

Appeal from the Supreme Court of the State of Illinois.

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PAUL F. JONES, Director of Insurance of the State of Illinois.

Appeal from the Supreme Court of the State of Illinois.

APPELLANT'S REPLY BRIEF.

I.

Observations and Comments on Appellee's Additional Statement of the Case.

As to "The additional statement of the case", on pages 2 to 6, of appellee's brief:—

Appellee in this additional statement, (pages 2 to 6 thereof) calls attention to what he says "are a few additional **material** facts, (emphasis is our own), which should be called to the attention of the Court".

Appellee then for that purpose, summarizes the petition filed by appellant in the St. Louis court on August 24, 1934 and states that there were three defendants named, Chicago Lloyds, Associated Underwriters, Inc., and Robert A. Roessel, an attorney, who had represented Chicago Lloyds in St. Louis; and on page 3 calls attention to the **fact** that while this damage suit was pending in St. Louis

> "and on February 9th, 1938, a Liquidator was appointed for Chicago Lloyds, who notified said Robert A. Roessel, who had appeared as counsel of record for Chicago Lloyds in said St. Louis damage suit, not to continue in the defense of said suit; and, that when said suit came on for trial in said St. Louis court on March 17, 1941, Robert A. Roessel was dismissed as a defendant, and although the remaining defendants were not present in court, either in person or by counsel, the record shows separate answers were filed on behalf of the remaining defendants (R. 34). Said **"purported"** answers denied the jurisdiction of the Court, denied that plaintiff was prevented from conducting his occupation as insurance agent as alleged in his petition for the reason, that prior to October 13, 1932, his license as an insurance agent and/or broker was revoked by the Insurance Department of Missouri for **cause**, and denied all of the allegations contained in plaintiff's petition. The plaintiff waived a jury, submitting the cause to the Court, and the case was then heard ex parte."

Were it not that appellee gives as a **reason** for adding these facts, "that they are additional **material** facts, which **should** be called to the attention of this Court", we might not make the following comments; but since we know of no reason for characterizing them as "material" facts, which require them to be "called to the attention of the Court," we strongly suspect that appellee has another motive, viz., an attempt "to prejudice" the **merits** of this case by subtle innuendo as he did before the Supreme

Court of Illinois. And since appellee has merely **sketched** said "material facts", and leaves to conjecture, what these pleas to the jurisdiction and "purported answers" really **were**, and by **whom**, and **when**, and **where** they were filed, we will supply the true light, and do so by staying within the record.

Those "answers and pleas to the jurisdiction," were the ones **filed by the defendants**, Chicago Lloyds and Associated Underwriters, Inc. in the Federal Court (Tr. 39-40), while the case was pending **there**, and **before** the case had been remanded to the State Court, and **upon which** the issues were there joined; and they were filed in the State Court on March 17, 1941, as the pleadings upon which the cause should be tried. The pleas to the jurisdiction, were also filed in the Federal Court and there had been overruled by the Federal Court (Tr. 14-39-40), before the cause was remanded, and long prior to February 9, 1938, when the Liquidator was appointed; and those pleas and answers distinctly disclosing the above, are **specifically** set out in the record at pages (Tr. 34-35, 39-40).

Just why they are characterized as "purported answers" we can only surmise.

Further we wish to state, that while it is true that **by those "answers"**, there was an **averment** that plaintiff's license as an insurance agent had been revoked **prior** to October 13, 1932 "for cause", this record, however discloses, that the defendants had maliciously caused appellant's first arrest **on** October 13, 1932, in a malicious effort in the criminal, rather than the civil courts, to **persuade** him to pay his indebtedness, (and though we know the facts, but do not wish to go outside of this record to state them) the **inference** is natural that the defendants themselves prior to having him arrested on Oct. 13, 1932 also caused the revocation of his license to any

longer act as **their** agent, since the laws of Missouri required appellant to file with the Insurance Department and keep on file his authority to write insurance for them (Secs. 5892, 5904, 5906, 5908 R. S. Mo. 1929), and therefore that they revoked and **used** the revocation of his license, as "a persuader", prior to maliciously resorting to the criminal court and having him maliciously arrested on October 13th, October 14th, November 28th, and December 2nd, 1932. We may also add, and we will not be going outside of the record, that perhaps it might be reasonably inferred that plaintiff dismissed against defendant Robert A. Roessel, individually, because he made no case against said individual defendant, since he was only a member of the firm of lawyers who (Tr. 16-32-40) participated with the defendants; and especially since this record **actually** shows, that appellant here did not dismiss as to defendant Robert A. Roessel, **until** he had **closed** his case against **all three** defendants (R. Tr. p. 34).

And again at pages 40 and 41 of appellee's brief appellee more clearly "elucidates" his true motive for calling attention to the above facts, and winds up by saying:

> "had appellant proved his claim in the liquidation proceedings, it may well be that his recovery if any, would have been much less than the amount of his judgment. This may account for his steadfast reliance upon the judgment."

And some ten lines above, on said same page 41 of his brief, appellee unqualifiedly asserts as follows:

> "According to his uncontradicted allegations he spent three days in jail because of his arrest, and 8 days in jail as the result of the indictment. That constituted his damage, except whatever damage may have resulted to his reputation because of the arrest. He alleges further damage in that he was prevented from continuing his business as an insurance agent

(R. 33), but the **record shows** (the emphasis is our own), that his license to do an insurance business in Missouri, had been revoked, **for cause**, by the Insurance Department of that State on October 13, 1932 (R. 34). Inasmuch as the first arrest of appellant on the embezzlement charge, took place on October 13, 1932, he had been deprived by the State of his right to carry on an insurance business in Missouri prior to his first arrest, and that alleged claim for damages is not tenable."

From the above, it is obvious that the appellee has given to the "**averments**" of the answer (which of course they never proved, though offered an opportunity to do so), the **effect** of the inuendo, contained in his said additional statement of the "**material** facts" which he states **should** be called to the attention of the Court.

Again at the bottom of page 5 of said additional statement appellee unqualifiedly states as follows:

"In the proceedings before the Master it was stipulated that appellant (claimant) on and prior to the 20th day of December, 1938, had notice of the Liquidation proceedings in the Superior Court of Cook County, Illinois, and of the Order of Injunction issued by that Court (R. 24)."

Said statement is not sustained by the record, and we therefore desire to also point out the above misstatement, and to page 83 of our original brief filed in this court, where we, anticipating that adversary counsel might again misstate the facts, **specifically** called attention to the very pages of the record here before this court, that conclusively disclose, that no such "stipulation" was ever entered into, and that this record discloses **conclusively** to the contrary.

II.

Chicago Lloyds Was Not "Created" Under the Laws of Illinois.

Again directing attention to appellee's said additional statement of the case, and to the last 2 lines of page 5 and top of page 6 thereof, where appellee states as follows:

> "Chicago Lloyds was not a corporation, but an unincorporated association **created** under and by virtue of the section of the Insurance Code applicable to individuals transacting insurance business in the State of Illinois under the name of Lloyds (Art. V. Insurance Code of 1937, Chapter 73, Section 698 and subsequent, Illinois Revised Statutes of 1945). Its only authority to conduct business in the State of Illinois was contained in a certificate of authority issued under the provisions of Section 699 of Chapter 73 of Illinois Revised Statutes of 1945. This certificate authorized Chicago Lloyds to transact business from the 1st day of July of the year of issuance to the 30th day of June of the following year, and unless renewed its right to conduct an insurance business terminated at the expiration date of the existing certificate."

That word "created", which we have above underscored, is the subtle statement of a legal conclusion, upon which appellee bases his **entire** argument and defense; and is one not deducible from **any** of the provisions of the Illinois insurance code therein referred to, or from any of the facts in this record.

The Statutes of Illinois referred to do **not** "create" either the individuals or the associations of individuals that may become authorized to transact an insurance business in the State of Illinois, but on the contrary only

provide (Section 614, Illinois Insurance Code, Chapter 73) that either a single individual, or an association of individuals, or a domestic or foreign corporation, or individuals conducting an insurance business **"on a Lloyd's plan" may** obtain **a license** to transact an insurance business in the State of Illinois; and as provided among those who may obtain a license are individuals or association of individuals who carry on their insurance business "under a Lloyd's plan"; and a special article, Article V, of said Insurance Code, provides the conditions under which **such** individuals, operating on a Lloyd's plan, may obtain the **approval** of "their Lloyd's plan."

Such insurance business "on a Lloyd's plan," by Section 86 (par. 698) provides that such individuals who wish to conduct an insurance business, on a Lloyd's plan, and who want to be **licensed** in Illinois to conduct that business, shall be and are arbitrarily divided and referred to in three classes: (1) "Domestic Lloyd's, meaning those individuals who have their home office in Illinois"; (2) "Foreign Lloyd's, meaning those who have their home office in other States of the United States"; (3) "Alien Lloyd's, meaning those who have their home office in foreign countries."

Each class is required to submit to the Insurance Director their "Declaration" of their proposed "Lloyd's plan of writing insurance" (Section 91, Par. 703), stating among other things the kind of insurance they desire and intend to write in Illinois, or are writing elsewhere in other States or in a foreign country. (We will not here repeat **all** of the provisions of the laws of Illinois which this "Declaration" is required to contain in order to obtain approval, because they are all set out in the law which is copied into the Appendix of our original brief at pages 104 to 106.)

However, the law clearly and distinctly provides that this "Declaration" must be "approved" by the Insurance Director; whereupon he issues to them "a certificate of approval" and also "a license to conduct their Lloyd's plan insurance business" in the State of Illinois **for one year**, and requires them to yearly thereafter obtain his approval and a **renewed** license.

The said statement on pages 5 and 6 of the brief of appellee that:

> "Chicago Lloyds was not a corporation, but an unincorporated association **created** under and by virtue of the Insurance Code applicable to individuals transacting insurance business in the State of Illinois under the name of Lloyd's" • • •,

is but the **start** made by appellee in the construction and later destruction of "a straw man," in an effort to build and supply a foundation, and to apply to **such** an association of individuals, the **effect** of the doctrine approved by this Court in the case of Pendleton against Russell, 144 U. S. 640, wherein in substance this Court, following the decisions of the State of New York on the **legal effect** of a dissolution decree by the courts of New York on a New York created insurance corporation, which decree terminated its artificial existence and forfeited its charter to be a corporation, and ended its existence as an artificial body, would have in **abating** suits against it; and wherein this Court held that judgments rendered against it subsequent to its dissolution were null and void in the same manner and for ONLY the very same reasons that judgments rendered against "a dead man" are void.

The above are our observations upon the additional statement of the case made by appellant on pages 2 to 6 of his brief.

III.

There Was No Waiver or Election.

Appellee also contends, in effect, pages 8 and 33 and 34 of his Argument, that appellant **lost** and **waived** his right to continue to prosecute his claim in Missouri to judgment and "elected" to prosecute it in Illinois. He there claims, that because upon receiving the notice from the Liquidator that he had taken possession of the assets of Chicago-Lloyds and that the Illinois court had fixed a dead-line for the filing of claims with said Liquidator, and the appellant responded to that notice, and filed his claim against Chicago Lloyds, with the Liquidator, that he therefore became "a party to the proceedings and was bound by the orders and decrees thereof" (treating the filing of his claim with such statutory Liquidator as the equivalent of and the same as appearing in court, and filing a claim with a Receiver, and as an **intervention** in a receivership proceeding). And that the appellant thereby submitted himself to the jurisdiction and to the procedure provided by the Illinois laws for the allowance and payment of claims.

This record, however, distinctly discloses on the contrary, that appellant made no such waiver and made no such surrender of his right to continue to prosecute his claim in his own jurisdiction, rather than submit it to another tribunal.

He, on the contrary, when filing his original claim with the Liquidator, filed **merely** a verified proof of claim on a form furnished by the Liquidator (T. 42, 10, 16) and attached thereto a copy of the petition for damages which he had filed in the St. Louis court, and which was there pending and awaiting trial, wherein the **basis** of his claim was averred; and **expressly** stated that said suit in St. Louis was awaiting trial upon its merits and that he intended to

prosecute it to final judgment; and when so reduced to judgment, would file an amended and supplemental claim. All as set out in this record (Tr. 10 and 16).

Therefore not only do the **facts** disclosed by this record conclusively disclose that no application of the said rules of law and principles of law, so contended for by Appellee, are actually involved in this case, but an examination of the very cases that appellee cites in support of such "election and waiver," disclose that the facts in each such case so cited by him, were far different from those here presented.

The first case cited by Appellee (p. 33 of his brief), **St. Louis-San Francisco Rd. et al. v. McElvane et al.**, 253 F. 123, is a case wherein bondholders had instituted a receivership proceeding against the railroad company for the foreclosure of its mortgage and for the benefit of all of its creditors, and there had been a foreclosure sale under that decree and the property of the debtor had been bought in by the bondholders. An unsecured creditor (McElvane) claiming that he was not a party to said Receivership suit (although he had intervened in said receivership suit, and had his claim allowed therein), attempted to question the legality and effect of said foreclosure decree, and brought a separate suit against said railroad company and the purchaser at said foreclosure sale in another court, alleging that the final decree of foreclosure and the sale under said decree, were violative of his rights as an unsecured creditor. The claim upon which he filed this separate suit was the same claim he had filed in the foreclosure case, to-wit: based upon a suit which he had theretofore brought against the railroad for the loss of a carload of mules. The receiver of the railroad and also the purchaser at said foreclosure sale, brought a suit to enjoin McElvane from proceeding

further with his said individual suit against them. The decree of the United States Circuit Court of Appeals for the Eighth Circuit, in said case, reported in 253 Federal 123, was to the effect that all unsecured creditors of a mortgagor are properly represented in a suit for foreclosure of the mortgage by their debtor, the mortgagor; and a decree and sale which bars the mortgagor in the absence of fraud, bars the unsecured creditor, who though not made a party thereto, or served with process, is there, by representation of his debtor; and the court enjoined the prosecution of said separate suit on that ground.

The second case cited on page 33 of Appellee's brief (Bethke et al. v. Grayburg Oil Co., 89 F. 2d 536) is one where the facts were very similar to those of the McElvane case, above mentioned. A plaintiff who had filed a claim in a federal receivership suit brought against the Grayburg Oil Company, and who obtained an allowance thereof, under an order authorizing the receiver to settle his claim, for one-third of the face amount thereof in full settlement of said claim, which said settlement the plaintiff had accepted, and was paid by said receiver, nevertheless attempted to prosecute said debtor, Grayburg Oil Company, thereafter in a separate suit for the balance of his claim in another court.

The corporation after discharge of the receiver filed a bill in the original receivership suit in said Federal Court to enjoin the said claimant from such attempt to collect said balance and obtained an injunction therein prayed for, based upon the fact that he was not again entitled to relitigate the matter, it being res adjudicata by reason of the accepted settlement and payment.

The third case cited by Appellee (Schwartz v. Randolph, 72 F. 2d 892) was a case where a stockholder of the defendant company had brought a suit in the Federal Dis-

trict Court of Maryland to have a receiver appointed to conserve the assets of said corporation on the ground that there was dissension between the directors. Schwartz resisted the application for a receiver unsuccessfully but took no appeal. After the receivership had been instituted Schwartz filed a suit against the company itself in the State of New York, for the sum of $79,328.92 alleged to be due him on an alleged breach of contract, and thereafter he intervened in said receivership suit in Maryland, and filed the **same** claim against the company; and in that receivership suit in Maryland, his claim was reduced to $2500 and allowed for $2500 against the company, from which he took an appeal. On the appeal the Court decided that having intervened in the receivership suit and having submitted his claim to the Receivership Court, that he was bound by the judgment, and that he was not thereafter entitled to proceed with his New York suit, his claim being res adjudicata.

IV.

The Entry of the Decree of Liquidation Did Not Adjudicate Appellant's Rights.

Further on pages 22 and 23 of Appellee's Brief, it is contended that appellant's **rights** were adjudicated at the time of the entry of the Liquidation Decree, February 9, 1938, and his **claim** against the insolvent "was fixed" as an unliquidated claim, subject to allowance or disallowance in accordance with the Liquidation Statutes of Illinois.

He also contends that **that** decree is res adjudicata of his rights, and that his Missouri judgment yields to that decree adjudicating his "status" and "fixed his status" as that of a mere creditor and holder of an **unliquidated** claim; and that he could not change that "status" as the

holder of an **unliquidated** claim, by reducing it to "a liquidated claim", by the judgment of any **other court**, than that of Illinois, which had so fixed his "status."

In support of this peculiar contention, he cites **Converse v. Hamilton**, 224 U. S. 243, 56 L. Ed. 749. We have ourselves cited that case at page 47 of our brief, in support of our contention "that full faith and credit must be given to a judgment of a sister state **even though** it is in conflict with the **policy** of the State of the forum,"—where **this** Court held that the courts of Wisconsin—the forum, could have **no policy** on the subject of the litigation, notwithstanding that to permit the action to be maintained in the Wisconsin courts, would be contrary to the settled **policy** of that State, in respect of the enforcement of the like liability of stockholders in its own Wisconsin corporations; since the matter was one, controlled by the Constitution of the United States requiring each state to give full faith and credit, etc., to the Minnesota proceeding **assessing** stockholders' liability.

We do not comprehend the appellee's contention—unless he thinks that because appellant's claim was **unliquidated** as of February 9, 1938, that it must remain unliquidated, and that only the Illinois Court could liquidate it—and we fail to see where in the Converse case, he obtains any support for such a thought. In the Converse case, supra, Minnesota had found that a resident of Wisconsin was a stockholder of the defendant corporation, and had fixed the amount of his unpaid liability as such stockholder. While it is true that in this instant case, the Missouri Court had NOT YET, on February 9, 1938, changed the appellant from "his status as the holder of an **unliquidated** cause of action" to that of a holder of a final judgment against Chicago Lloyds, we fail to comprehend **how** the State of Illinois, even in a proper case, could validly stunt the growth of appellant, and prevent him from becoming a judgment creditor.

Doctrine Announced in Pendleton v. Russell, 144 U. S. 640, Is Not Applicable.

I.

There is no contention whatever made here on the part of appellant that if "Chicago Lloyd's" had been an Illinois insurance corporation and that the courts of Illinois, in a proper legal proceeding, had dissolved that corporation and forfeited its charter prior to the date of a litigant obtaining a judgment against it, that such judgment would have been void and a mere nullity under the doctrine stated in Pendleton against Russell, 144 U. S. 640, expressed by this Court.

However, no such FACTS and no such doctrine are here presented or involved.

We also in our original brief (pages 61, 63, 68) called attention to certain **facts** disclosed by **this** record which would make the doctrine of Pendleton v. Russell not applicable in this instant case, **even if** "Chicago Lloyd's" were a corporation and had been legally dissolved, and based upon the reasons given by this Court in the case of Clark v. Williard, 294 U. S. 112, wherein such doctrine of "legal death" and termination of the existence of an insurance corporation and the "abatement of pending suits" against it, were held **not** to operate, even in the case of a legally dissolved corporation because of the provisions of the **laws** of the Sister State (Montana), where the judgment was obtained.

That Pendleton v. Russell doctrine of "abatement" would not apply, even to a dissolved corporation, where the judgment was entered under the laws of the State of Missouri, providing as one of the conditions for licensing a foreign insurance corporation or a voluntary association of indi-

viduals to transact an insurance business in the State of Missouri (which provision said Chicago Lloyd's accepted) (Tr. 37, 40), that service of process upon it or upon them might be obtained against them in Missouri by serving process upon the Superintendent of Insurance

> "which shall be as valid as if served upon the company, and shall be binding and deemed personal service upon such company, **so long as** it shall have any liabilities outstanding in Missouri, even though such company may have withdrawn, been excluded from, or ceased to do business in the state";

and therefore that a judgment obtained against even a dissolved corporation upon such service in Missouri is valid and binding, notwithstanding it was entered subsequent to the dissolution of such foreign insurance corporation, as even a "Chicago Lloyds," by a proper decree of the courts of the State of its creation, and is therefore entitled to full faith and credit under the Constitution of the United States.

We excerpt from the decision of this Court in the above case of Clark v. Williard, 294 U. S. 1123 (l. c. 119), the following:

> "We assume in accordance with the decision of the Montana court that the respondents' action against the surety company did not abate on dissolution, but was lawfully pursued to judgment" (citing cases);

and also the following from Clark v. Williard, 294 U. S. 211, l. c. 213, 79 L. Ed. 865:

> "If the corporation were still in being, and still the owner of the assets, its ownership would be subordinate to the process of the local courts. So much would be conceded everywhere. If title had been conveyed to an assignee for the benefit of creditors by a common law assignment or by insolvency proceedings,

claimants in Montana might pursue their suits and remedies in derogation of the assignment when the law or policy of the locality ordained that this result should follow" (citing cases).

"The principle of these decisions applies with undiminished force to a statutory successor. In respect of his subjection to the power of the local law, his position is no better than that of the dissolved corporation to whose title he has succeeded **or of its voluntary assignee upon a trust for all the creditors.** He must submit, as must they, to the mandate of the sovereignty that has the physical control of what he would reduce to his possession." (Emphasis our own.)

Under Laws and Decisions of State of Missouri the Illinois Liquidator Was Bound by Appellant's Missouri Judgment.

In our original brief we at pages 61-63 and 68 unequivocally conceded **that** to be the law, and ourselves cited the decisions including Pendleton against Russell, and Clark v. Williard, 294 U. S. 211, in support of that doctrine; **but** we also called attention to the fact that such a judgment is **only** null and void because the individual against whom it was taken, or the corporation against which it was taken, is no longer in existence: The one because he, an individual, was dead, and the other because **it** had been legally dissolved. And we also called attention to the fact that the **sole** and **only** reason that such judgments are void, and a mere nullity, is as above stated, that they were taken either against a dead man, or a dissolved corporation whose legal existence had been legally terminated, by the State that created it, by dissolving it and forfeiting its charter.

In our original brief, at pages 65 to 75, we also directed attention to the well settled law, that suits that have been instituted and are pending against such artificial bodies, such State created corporations, are **not** legally

abated by the mere appointment of a Receiver to wind them up, **unless** and **until** an order has been legally entered in said receivership action, properly declaring said corporate body dissolved and its charter forfeited to the State, and its artificial existence thereby legally terminated; and that such is the law of this very State of Illinois (whether such corporation be an insurance corporation or a manufacturing corporation, etc.).

II.

While we do not wish to again in this Reply Brief review and urge any of the points and arguments already made in our original brief, we think it would be well to direct this Court's attention to another Missouri case: Central Trust Company of Mobile v. Edward D'Arcy, Trustee, of J. H. Smith Lumber Company, 238 Missouri 676 (October Term of the Supreme Court of Missouri, December 23, 1911), 142 S. W. 294, and to suggest the following:

"Chicago Lloyds", when they obtained their license to transact an insurance business under a Lloyds Plan in the State of Illinois, and obtained the approval of the Insurance Director of the State of Illinois of "their Lloyds Plan," as stated in their "Declaration" for writing insurance in Illinois, **may have** impliedly agreed with the State of Illinois, that if at any time they disobeyed any of the laws of Illinois, which provided for the termination of their license and their conduct of their business in Illinois, and for the appointment of a trustee or liquidator to distribute their Illinois assets among their creditors, viz: (if they fail to maintain and possess a surplus of $500,000 over and above their liabilities), that they would submit to an **involuntary assignment** of all their assets located in Illinois to a statutory liquidator, "for distribution among all of their creditors."

This we believe is the legal effect upon an unincorporated association, of the laws of Illinois involved in this case.

The Supreme Court of Missouri, in the Central Trust Co. v. D'Arcy case, supra, held that a judgment obtained in Missouri against an insolvent corporation after it had conveyed all of its property to a Missouri trustee for the benefit of all of its creditors, was a valid and binding judgment upon said corporation; that it is also binding upon said trustee; and that the fact that it had conveyed its assets to a trustee for the benefit of all of its creditors, did not exempt it from suit by its creditors; and that if in that suit, it permits judgment to go against it even by default, its trustee, when the judgment is presented to him for allowance and payment,—and when upon his refusal, suit is brought against him to compel payment, can not be heard to defend on the ground that the former suit was not brought against **him** and that **he** was not heard.

The Court held: that such suit established **the fact** that the corporation was the debtor, and that the plaintiff was its creditor, and that the trustee is not the owner of the property but accepted the conveyance for the purpose of paying the debts; and that it was his plain duty to recognize **that fact**, and to pay said creditor its appropriate part of the funds in his hands, said judgment being final and unappealed from and binding upon the parties thereto.

Such is the law of Missouri and the binding effect in Missouri of Appellant's said Missouri judgment against Chicago-Lloyds; and we may add is the law of every State of the Union where such an assignment has been made by any debtor for the payment of his debts; and that upon presentation of that judgment to the custodian of the debtor's property no defense is open to him that was not made when the judgment was entered.

The liquidator provided by the laws of Illinois did not become the owner nor the successor in ownership to even the property of the debtor that was located in Illinois and certainly obtained neither the ownership nor the possession nor right to take possession of any assets belonging to Chicago-Lloyds outside of the State of Illinois.

He is in law a mere trustee and custodian of the debtor's assets in Illinois; and has but one duty to perform: To collect and distribute them pro rata among those who are the legal creditors of the debtor. And a judgment creditor of a sister-state is such creditor upon presentation of a properly authenticated judgment rendered by a court of that sister-state, which had jurisdiction of the subject-matter and of the debtor when said judgment was rendered. The same doctrine is laid down by Glenn on Liquidation, pages 654 and 655.

When, however, the debtor is an Illinois corporation instead of a mere individual or a mere voluntary association of individuals, and the Courts of Illinois have by proper proceeding dissolved that "corporation-debtor," and it no longer exists, and the Statutes of Illinois provide that whatever assets that dead corporation possessed shall vest in that statutory liquidator, nevertheless although he obtains title to its assets he has but the same duty to perform: namely, to collect and distribute those assets to the defunct corporation's creditors. He becomes merely a trustee to liquidate and pay the proceeds of liquidation to the corporation's creditors; and if a suit was pending in a sister-state against that individual debtor or against a voluntary association of individual debtors, he must enter his appearance in that suit, and there contest its merits and having failed to do so can not require the claimant to again try the merits in his state.

III.

Appellee in his summary of the argument and also in his argument makes use of "a straw man." He treats "Chicago Lloyd's" as either an association of dead individuals or as a dissolved corporation; and since it is elementary law that all actions are abated by the death of the one, and the dissolution and the termination of the "State-given-life" of the other, he dwells upon irrelevancies, and attempts to apply the doctrine of Pendeleton against Russell to this "Chicago Lloyds."

He calls Chicago Lloyd's "a company" in this brief, while in the one he filed in support of his motion to dismiss this appeal, he referred to Chicago Lloyd's as "an estate" (page 1 of appellee's brief on dismissal), and having so described these associated individuals as "a State created body which the State of Illinois created and therefore had the power to destroy, he is attempting to evade the obvious fact that unless this association of individuals doing business under the name "Chicago Lloyd's," is an Illinois created corporation, they remained an association of living individuals not incorporated, after, and even though the courts of Illinois properly enforced the statutes of Illinois and took over their Illinois assets for legal distribution among all of their creditors, and revoked their license to any longer transact their insurance business under a Lloyd's plan, in the State of Illinois.

Had Chicago Lloyd's been an Illinois created corporation and by a proper proceeding its charter to exist had been revoked and its artificial existence had been terminated, and such a Court had taken possession of its assets, its legal death would have been accomplished (absent the doctrine established in Clark v. Williams, 294 U. S. 112), and the legal effect of such a dissolution would follow, regardless of the other provisions of the Illinois

Insurance Code (relative to issuing extraterritorial injunctions binding in sister state tribunals, and to "title" passing to the Liquidator and thereby abating all pending actions against "the dead man" in sister States) but due **entirely** to the elementary law and doctrine announced in Pendleton against Russell, 144 U. S. 640.

However, even if Chicago Lloyd's had been such "a State created artificial body," whose life and existence could be taken away, the doctrine of Pendleton against Russell would not apply **unless** and **until** the State of Illinois by a proper decree had dissolved it, and terminated its existence. And even the appointment of a receiver to take charge of a partnership or of such a corporation's assets, and to "wind it up," and distribute its assets among its creditors, would not suffice to put that doctrine into effect; and until it is "killed," and actually dissolved, any pending action against it can proceed to final judgment, whether it is pending in the State of Illinois or in a sister State; and a judgment of a sister State against even an undissolved corporation rendered in a case where only a Receiver has been appointed by the Courts of the State of its creation, is a valid judgment, and entitled to full faith and credit, "any provision of the Constitution or laws of the State of Illinois, to the contrary notwithstanding" (Aricle VI of the Constitution of the United States and the Fourteenth Amendment thereto)

Appellee in the Summary of Argument, page 7 of his brief, also argues that since the State of Illinois licensed these individuals by yearly license to carry on their business in the State of Illinois, and revoked that license, and refused to permit them to longer do an insurance business in Illinois (because they were found to have disobeyed one of the provisions of its laws, viz., failed to possess a surplus of $500,000.00 over and above their lia-

bilities, whereas they had but $300,000 of surplus, and for that reason had appointed a Liquidator to take charge of their assets, and had restrained their officers and agents from continuing to write insurance in the State of Illinois), and had ordered their assets distributed among their creditors, that such action against them is equivalent to "killing" those individuals who were transacting their insurance business under the name Chicago Lloyd and "terminated their existence," not only in Illinois, but in every sister State where they were doing business; and brought into play the doctrine of Pendleton against Russell, and ipso facto abated all suits pending in sister States, and rendered all judgments entered therein, subsequent to that "death" of Chicago Lloyds mere nullities and void; and justified the State of Illinois and its Supreme Court, in refusing to honor them in the distribution of the assets of Chicago Lloyds which Illinois had merely seized; and because Chicago Lloyds was therefore "dead," only the courts of Illinois had jurisdiction to adjudicate claims against the assets owned by those associated individuals.

The whole argument of appellee is based upon that fallacy, as pointed out specifically in our original brief. And since such was also the basis and ground of the decision of the Supreme Court of Illinois from which this appeal is prosecuted, we again submit, and pray this Honorable Court to reverse said erroneous decision, and to direct and order the Superior Court of Cook County, Illinois to set aside its order and judgment disallowing appellant's claim and to direct the Liquidator of Chicago Lloyds to allow said Missouri judgment for the sum of $50,000.00 with 6% interest thereon from April 7, 1941, until paid (which is the provision of said judgment [T. 35]) and to pay the same pro rata with all other unsecured creditors of Chicago Lloyds.

And we further pray for a directive and mandatory order so as to avoid future quibbling and to insure compliance with this court's decision, as to the right of appellant to participate pro rata with all other unsecured creditors, because his claim is based upon a tort committed by said individuals, under their name "Chicago Lloyds," and is therefore one that is entitled to rank equal to, and on an equal pro rata basis, with that of all general unsecured creditors, in the distribution of their assets, seized by the State of Illinois and in the possession of said Liquidator for the benefit of all creditors; and to retain jurisdiction until the mandate of this Court is obeyed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 961

CHARLES B. MORRIS,

Appellant,

vs.

PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

MOTION TO DISMISS OR AFFIRM

FERRE C. WATKINS,
General Counsel,
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OTIS F. GLENN,
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OTTO W. BARNES,
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N. P. Parkinson,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 961

PEOPLE OF THE STATE OF ILLINOIS, EX REL. PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, *(Petitioner) Appellee,*

vs.

CHICAGO LLOYDS, *(Respondent) Appellee,*

CHARLES B. MORRIS, *(Claimant) Appellant*

APPELLEE'S STATEMENT DISCLOSING MATTER OR GROUND MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES AS ASSERTED BY APPELLANT, FILED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH 3, RULE 12, OF THE SUPREME COURT OF THE UNITED STATES, AND MOTION TO DISMISS APPEAL OR AFFIRM THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS.

The basic issue involved in this case is: whether a prior Illinois judgment which vests an insolvent insurance estate in a Liquidator for the purpose of having it distributed

according to the Illinois Statutes is entitled to priority over an ex parte judgment entered in Missouri against the insolvent insurance company three years after the entry of the liquidation order in the Illinois Court. The Missouri claimant, who took an ex parte judgment with knowledge of the Illinois liquidation order and presumptive knowledge of the Illinois Liquidation Statutes, claims that his judgment is entitled to full faith and credit, and that he does not need to prove up his claim in the Illinois liquidation proceedings in accordance with the liquidation decree and the Illinois Statutes.

The following statement disclosing matter or ground making against the jurisdiction of the Supreme Court of the United States as asserted by the appellant in his Jurisdictional Statement herein is filed in accordance with the provisions of paragraph 3, rule 12 of the Supreme Court of the United States:

I

This is not a case "where there is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States."

The Supreme Court of Illinois in its opinion, attached to Appellant's Jurisdictional Statement, found the facts as follows: On February 9, 1938, a decree was entered appointing a Liquidator and decreeing that the Director of Insurance of the State of Illinois take possession of the property of Chicago Lloyds and liquidate the same in accordance with Article XIII of the Illinois Insurance Code of 1937. On February 15, 1938, an order was entered fixing the time and procedure for the filing of claims requiring claims to be presented to the Liquidator on or before November 15, 1938. On September 21, 1938, the appellant

filed his claim with the Liquidator. Before the liquidation proceeding began, he had filed suit in the Circuit Court of the City of St. Louis, Missouri, against Chicago Lloyds, After the Illinois liquidation order the suit was no longer defended because that order vested title to all the property and assets of Chicago Lloyds in the Illinois Liquidator. Rather than prove up his claim filed in the liquidation proceedings, appellant elected on April 7, 1941, to take an ex parte judgment for $50,000.00 against Chicago Lloyds. He then filed the judgment in support of his claim and demanded full faith and credit for it against the *res* in possession of the Illinois Liquidator.

On September 19, 1945, the Supreme Court of Illinois decided that the liquidation order vested the title to all assets of Chicago Lloyds in the Illinois Liquidator, to be liquidated pursuant to Illinois law. As this liquidation order was prior to defendant's ex parte judgment in Missouri, the Missouri judgment was denied any effect against the assets held by the Illinois liquidator.

Appellant, pursuant to Section 237 (a) of the Judicial Code (28 U. S. C., Sec. 344(a)), predicates the jurisdiction of this Court upon the sole theory that the validity of a State statute is questioned as being repugnant to the Constitution of the United States. It is claimed that the decision of the Illinois Supreme Court abridges the privileges and immunities of the appellant, denies him equal protection, deprives him of his property without due process, and denies him the benefits of Article IV, Section 1 of the Constitution concerning full faith and credit of judgments of the different states.

Was the validity of a State statute at issue before the Illinois Supreme Court, and did that Court base its decision on that issue?

It is submitted that the decision of the Illinois Supreme Court merely involved the construction of Illinois Statutes

and the giving of full faith and credit to that construction.

In its opinion the Illinois Supreme Court surveyed the Illinois Statutes concerning liquidation set forth in Article XIII of "An Act to revise the law relating to insurance," referred to as the Insurance Code. The Court's summary of this Statute is as follows:

> "Section 188 of the Insurance Code, (Ill. Rev. Stat. 1943, chap. 73, par. 800,) specifies the grounds upon which the Director of Insurance and the Attorney General may petition a circuit or superior court for an order to show cause why an insurance company should not be liquidated. Section 189, (par. 801,) of the Insurance Code provides the court may issue an injunction to protect the assets of such insolvent company. Section 190, (par. 802,) provides, upon full hearing, the court may enter an order either to dismiss the proceeding, or find cause exists, and order the Director of Insurance to take possession of the property, business, assets, and affairs of said insolvent insurance company, and liquidate them according to law. Section 191, (par. 803) provides that the Director, as liquidator, is vested by law with title to the property, contracts and rights of such insolvent insurance company, as of the date of the order entered by the court. Section 193, (par. 806,) provides that creditors, except those holding contingent claims, shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. Section 208, (par. 830,) directs the manner of fixing the time to file claims, after an order has been entered declaring the company insolvent. Section 209, subsection (3), (par. 821.) provides how and under what conditions a contingent claim may be allowed, with a limitation that the claim must become absolute against the company on or before the last day fixed for filing the proofs."

The full text of the Statute appears in Appellant's Jurisdictional Statement. The Illinois Supreme Court ascer-

tained as a matter of local law that the Illinois Liquidator became vested with title to all of Chicago Lloyds' property on February 9, 1938, the date of the liquidation order. Thus the Court stated:

> "In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds, upon the entry of the decree of the Superior Court of Cook County of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois statute for the liquidation of insolvent insurance companies."

This is in accord with well established precedent. (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749; (*Clark* v. *Williard*, 292 U. S. 112).

Full faith and credit applied to this order of February 9, 1938, gave the Liquidator title to the assets of Chicago Lloyds to be liquidated pursuant to the Illinois law.

As this order was prior to Appellant's ex parte judgment of April 7, 1941, and directed liquidation pursuant to Illinois law, defendant's ex parte judgment has no effect against the Liquidator. Appellant filed his claim in the Illinois liquidation proceeding on September 21, 1938. Instead of pursuing the Illinois process of perfecting his claim in the liquidation proceedings, however, he proceeded to obtain the entry of an ex parte judgment against the insolvent Chicago Lloyds in Missouri, filing this judgment with the Liquidator and claiming full faith and credit for the judgment. The validity of the Illinois Statute is not in issue, nor is Appellant deprived of full faith and credit. His subsequent ex parte judgment merely yields to the prior judgment of the Illinois court.

The Supreme Court goes even further to point out that its decision is based on local law and makes the following statement concerning the appellant's judgment:

> "If such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds."

The Court then cites *Harkin* v. *Brundage*, 276 U. S. 36 and *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189, to the effect that the uniform rule is that the court which first acquires jurisdiction of the *res* is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction. The Court then states:

> "The Superior Court of Illinois, by a decree finding insolvency, thus had obtained jurisdiction of the *res* by the law vesting title in the liquidator and such liquidator is entitled to keep and retain such possession to the exclusion of the process of any other court."

The claimant here filed his claim in the Illinois proceeding, recognizing its jurisdiction, but when it came to proving up his claim against the *res* in Illinois, he preferred to take ex parte judgment against the insolvent in another State and assert it in the Illinois proceeding against the estate on the ground of full faith and credit. Having filed a claim in the liquidation proceeding and having failed to perfect his rights under the local law, claimant is barred from recovery *not* because of a violation of his rights under the Constitution, but rather for failure to follow the local law in proving his claim, which he recognized by filing his claim.

The claimant might have proved his claim against the Illinois *res* in the manner provided for by the Illinois Statute and followed by other claimants. He cannot now complain

that he has not had due process, equal protection or that his privileges and immunities have been violated. He had adequate opportunity to prove up his claim in the Illinois proceeding and elected not to do so. Full faith and credit gives the Illinois judgment vesting title in the Liquidator priority. Even if the Missouri judgment were entitled to full faith and credit, it would not be allowed against the *res* in possession of the Liquidator, for once the Liquidator takes charge of the *res*, he must dispose of it in accordance with the law and processes of his jurisdiction.

The validity of a State statute is not involved in this proceeding for the further reason that the ex parte judgment of appellant is void.

Chicago Lloyds was not a corporation, but a statutory entity authorized to conduct an insurance business under the provisions of Section 87 of Article V of the Illinois Insurance Code of 1937 (Paragraph 699 of Chapter 73 of the Illinois Revised Statutes of 1945). That section provides as follows:

> "*Certificate of Authority.* It shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. All certificates of authority issued under the provisions of this Article shall terminate on the thirtieth day of June next following the date of issuance and may be renewed upon compliance with this Code."

An order of liquidation against Chicago Lloyds was entered by the Superior Court of Cook County, Illinois, on the 9th day of February, 1938. The company ceased to be a legal entity either on that day or its legal existence terminated on the subsequent June 30, 1938, when the certificate authorizing it to conduct an insurance business expired by statute. The judgment of appellant was taken on April 7,

1941, approximately three years after the date of the liquidation order against Chicago Lloyds and approximately three years after the expiration date of the certificate authorizing Chicago Lloyds to conduct an insurance business.

No provision of the Illinois Insurance Code of 1937 provides for the dissolution of a company—not a corporation—carrying on an insurance business under an annual certificate for the very apparent reason that when a certificate expires the legal existence of the company is thereupon ended.

When the decree of liquidation was entered and the certificate of authority of Chicago Lloyds expired under the Statute, its legal existence terminated and a judgment subsequently taken against it is void and no provision of the Constitution of the United States has any applicability to a void judgment.

There is no enabling provision of the Statutes of Illinois preserving a right to creditors of an insolvent insurance company to pursue remedies against the insolvent. The Illinois Insurance Code of 1937 provides the only method of liquidating such claims.

II

The Illinois Insurance Code provides a complete method for the liquidation of an insolvent insurance company of the State of Illinois. All parties interested in an insolvent insurance company of the State of Illinois, whether residents within or without the State of Illinois, are bound by the provisions of the code governing the liquidation of such a company. The present case, therefore, presents no substantial Federal question worthy of review in this Court.

The liquidation proceedings under the Illinois Insurance Code of 1937 is a proceeding *in rem*. The title to the assets of the insolvent insurance company is vested in the Director

of Insurance as Liquidator of the insolvent company, under Section 191 of Article XIII of the Illinois Insurance Code of 1937 (Par. 803 of Chapter 73 of the Illinois Revised Statutes of 1945). Article XIII of the Code provides a complete method for the allowance of claims in the liquidation proceeding and for the liquidation of the assets of the insolvent company and their distribution on account of the allowed claims. All parties, wherever located, are bound by the provisions of the Code and the liquidation proceedings instituted in accordance with the provisions thereof. (*Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749; *Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Under the liquidation statutes of the State of Illinois, the Director of Insurance and the Court in which such liquidation proceedings are conducted have exclusive jurisdiction of the allowance of all claims against the insolvent and of the distribution of its assets to those entitled thereto.

Section 194 of Article XIII of the Illinois Insurance Code (Par. 806, Chap. 73 of the Illinois Revised Statutes of 1945), provides:

> "*Rights and Liabilities of Creditors Fixed Upon Liquidation.* The rights and liabilities of the company and of its creditors, except those holding contingent claims, and of its policyholders, stockholders or members and of all other persons interested in its assets shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. The rights of claimants holding contingent claims on said date shall be determined as hereinafter provided."

Under the provisions of this section, the Superior Court of Cook County, Illinois, in its Decree of Liquidation entered on the 9th day of February, 1938, fixed the rights and liabilities of all creditors of Chicago Lloyds as of

the 15th day of February, 1938. The claim of appellant, Charles B. Morris, was then pending in the Circuit Court of the City of St. Louis, Missouri, and it was then an unliquidated claim, and under the order of the Superior Court of Cook County, Illinois, its status was fixed as an unliquidated claim in this proceeding as of the 15th day of February, 1938. So far as the liquidation proceedings of Chicago Lloyds were concerned, the Appellant, Charles B. Morris, could not effectually change the character of his claim after the 15th day of February, 1938, although he subsequently proceeded to obtain a judgment. His status in these proceedings having been fixed by the Superior Court of Cook County and the Illinois Statutes, that status being a creditor with an unliquidated claim, his act in subsequently obtaining the entry of a judgment was of no force and effect. His unliquidated claim as fixed by the Superior Court of Cook County was entitled to be filed in the liquidation proceedings, and upon proof of liability and damages sustained, said claim would be allowed and participate in the distribution of the assets of the insolvent company. The appellant, Charles B. Morris, had knowledge of the liquidation proceedings and filed his claim therein on the 21st day of September, 1938, (Abs. 58), and he thereupon submitted himself to the jurisdiction of the liquidating court.

At the time of the entry of the Order of Liquidation by the Superior Court of Cook County, Illinois, on February 9, 1938, that Court, in accordance with the provisions of Section 189 of Article XIII of the Illinois Insurance Code (Paragraph 801 of Chapter 73 of the Illinois Revised Statutes of 1945), issued an injunction, and that injunction in part (Abs. 5) provided that

> "It is further ordered, adjudged and decreed that the rights and liabilities of Chicago Lloyds and of its creditors (except those holding contingent claims) and

of its policyholders, underwriters and all other persons interested in its assets are fixed as of 12 o'clock, noon, Central Standard Time, February 15, 1938; that all creditors and other persons having claims against said Chicago Lloyds are immediately enjoined and restrained from instituting any suit or proceeding intended for the purpose of obtaining a judgment against Chicago Lloyds, from having any execution issued against it upon any judgment heretofore entered against it, from taking any action which would or might interfere with the liquidation or relator's possession and control or title, right or interest in or to the business or property of Chicago Lloyds, from in any manner interfering with the conduct of said liquidation by relators, and all persons are hereby immediately restrained and enjoined from obtaining or attempting to obtain preferences, judgments, attachments or other like liens, and from making any levy against Chicago Lloyds, or its property, assets, books or records, while the same are in the possession and control of relator and until the further order of the court."

By filing his claim in the liquidation proceedings, the claimant submitted himself to the jurisdiction of those proceedings and to the injunction order entered by the Superior Court of Cook County, and there is a stipulation in the record (Add. Abs. p. 5) which indicates that the claimant, Charles B. Morris, had notice of the injunction. Although his rights were fixed as a creditor of the insolvent company as of the 15th day of February, 1938, and although the injunction order of the Superior Court of Cook County enjoined him from proceeding to obtain judgment, he nevertheless did proceed to obtain his judgment, and in this proceeding seeks to compel the Superior Court of Cook County to recognize that judgment taken three years after his rights were fixed as a creditor and taken in violation of the injunction order of that Court.

The full faith and credit clause does not affect the power of a state to control the transfer and distribution of property situated within its borders.

A concise statement of the rule is found in 5 R. C. L. 927 (citing cases) as follows:

> "The dominion of a state over personal property within its borders is complete and its rights to regulate its transfer and subject it to process and execution in its own way and by its own laws is unquestioned."

The Supreme Court of Illinois followed well settled law in construing its statutes to give the Liquidator title to all the assets of Chicago Lloyds. *Relf* v. *Rundle*, 103 U. S. 222, 26 L. ed. 337; *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. ed. 749.

This Illinois liquidation order and the Illinois Liquidation Statute are entitled to full faith and credit. The ex parte judgment of claimant, which was taken with notice of the prior Illinois liquidation decree and with notice of the Illinois Liquidation Statute, is of no force and effect and its disallowance in the liquidation proceedings does not involve the Full Faith and Credit Provision of the Federal Constitution.

The Supreme Court of Illinois made its decision on well settled law, stating

> "No case has been called to our attention which gives to the judgments of one State the force and effect that it has therein as against a prior judgment in another State, under which possession of property has been taken by the officer of the latter court. In such instances the rule seems to be uniform that the court which first acquires jurisdiction over the *res* is entitled to retain it and dispose of it in accordance with the law and processes of its jurisdiction. *Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457; *Penn General Casualty Company* v. *Pennsylvania*, 294 U. S. 189, 79 L. ed. 850.

Illinois, by its Insurance Code, provided a way for the Missouri claimant to file and perfect his claim in the Illinois liquidation proceeding. He failed to perfect his rights under the Illinois law controlling the distribution of the *res*. Under such circumstances, the full faith and credit clause of the Federal Constitution will give him no further right against the Illinois *res*.

From the foregoing it is manifest that the Illinois decision is based on well established precedent, and a substantial federal question is lacking for decision by this Court.

III

The decision of the Supreme Court of Illinois is not repugnant to the full faith and credit clause of the Constitution of the United States or to the laws enacted thereunder.

The full faith and credit clause of the Constitution (Article IV, Section 1) requires only that the judgment rendered by a court of a sister state be accorded the same faith and credit that it would have in the sister state. What faith and credit it is entitled to in the state where rendered is determined by the law of that state. *Adams* v. *Saenger*, 303 U. S. 59, 82 L. ed. 649; *Gasquet* v. *La Peyre*, 242 U. S. 673, 61 L. ed. 367, 37 S. Ct. 165; *Chicago, etc. Ry. Co.* v. *Wiggins Ferry Co.*, 119 U. S. 622, 30 L. ed. 519, 7 S. Ct. 398; *Hanley* v. *Donoghue*, 116 U. S. 3, 29 L. ed. 535, 6 S. Ct. 242.

The law of Missouri was considered by the Supreme Court of Illinois in the present case. It found that the statutes and decisions of Missouri gave no right to the holder of a judgment entered in Missouri against a foreign insurance company subsequent to the entry of a decree of liquidation in the domiciliary state, to enforce his judgment against any assets located in Missouri of the foreign insurance company in liquidation. Mo. Rev. Stat. (1929)

Sec. 5947. *McDonald* v. *Pacific States Life Insurance Company*, 343 Mo. 1232, 124 S. W. (2d) 1157.

Therefore, the decision of the Supreme Court of Illinois, construing Article XIII of the Illinois Insurance Code, is not repugnant to Article IV, Section 1 of the Constitution of the United States. The Illinois Liquidator and the Illinois courts, in requiring appellant to prove his claim in the Illinois liquidation proceeding, did not give any less recognition to the Missouri judgment than would be accorded it under the declared law of the State of Missouri. In so holding, the Illinois courts imposed no greater or different burden upon appellant than it imposed upon its own citizens having claims against Illinois insurance companies in liquidation. *Evans* v. *Illinois Surety Company*, 319 Ill. 105.

Conclusion

The Appellant seeks to obtain a ruling in this Court which, if granted, would destroy the statutory plan of liquidation of insolvent insurance companies adopted by Missouri, Illinois and most of the other States. The Federal Bankruptcy Act excepts insurance companies from its operation (11 U.S.C.A. Sections 22 (a) and 22 (b); *Vallely* v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348), and this Court has indicated its disapproval of Federal jurisdiction over insolvent insurance companies by way of equity receivership (*Commonwealth of Pennsylvania* v. *Williams*, 294 U. S. 176; *Gordon* v. *Ominsky*, 294 U. S. 186; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189), leaving the subject matter to the states. The liquidation of insolvent insurance companies under state statutes would be hopelessly confused were the Liquidator appointed by the domiciliary state forced to go into each state in which suits were pending against the company when placed in liquidation and there defend against all such claims.

Appellant, by urging that the Statutes of Illinois violate the Federal Constitution and laws, argues for the emasculation of orderly liquidation and distribution provided by those Statutes and by the Statutes of his own and of a majority of the States, which are designed to preserve the same rights to all creditors as are preserved by the Federal Bankruptcy Act.

Motion to Dismiss Appeal or to Affirm Judgment of the Supreme Court of Illinois

Now comes N. P. Parkinson, Director of Insurance of the State of Illinois, as Liquidator of Chicago Lloyds, Appellee, by his attorneys, and, for the reasons set forth in the above and foregoing Statement of Appellee Concerning Jurisdiction filed under the provisions of Paragraph 3, Rule 12 of the Supreme Court of the United States, respectfully moves the Supreme Court of the United States to dismiss the appeal of Charles B. Morris, or, in the alternative, to affirm the judgment of the Supreme Court of Illinois.

Dated at Chicago, Illinois, this 4th day of March, A. D. 1946.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 62

CHARLES B. MORRIS,
Appellant,

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF APPELLEE

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Summary of Argument.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 62

CHARLES B. MORRIS,
Appellant,

VS.

PAUL F. JONES, Director of Insurance of the State of Illinois.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF OF APPELLEE.

Opinion Below

The opinion of the Supreme Court of Illinois is reported in *The People* v. *Chicago Lloyds,* 391 Ill. 492 (November 19, 1945).

JURISDICTION.

Appellee has heretofore filed herein a motion to dismiss the appeal or affirm the judgment, including his statement disclosing matter or ground making against the jurisdiction of this Court, filed in accordance with the

provisions of Paragraph 3, Rule 12 of the Rules of this Court. On April 29, 1946, this Court entered an order providing that further consideration of the question of jurisdiction in this case be postponed until the hearing on the merits. We therefore present this Brief on the merits of the cause and in further support of the motion to dismiss or affirm and the statement making against the jurisdiction of the court heretofore filed herein.

Additional Statement of the Case.

Appellee agrees to the substantial part of Appellant's statement of the case and of the facts. However, there are a few additional material facts which should be called to the attention of the Court.

The claim of Appellant is presented upon a judgment entered in the Circuit Court of the City of St. Louis, Missouri on April 7, 1941 (R. 35). Defendants to that suit were. Chicago Lloyds, Associated Underwriters, Inc. and Robert A. Roessel, an attorney who had represented Chicago Lloyds in St. Louis. The Complaint (R. 29-33) in that cause alleged that Chicago Lloyds was authorized to do business in the State of Missouri and that Appellant was appointed agent for Chicago Lloyds to effect fire and other insurance in Missouri; that during the general business depression in 1930, 1931 and 1932, he became delinquent in his account with Chicago Lloyds to the extent of $2410.58; that various extensions to pay said sum were granted to him, but that finally on October 13, 1932, Robert A. Roessel, the agent and attorney for Chicago Lloyds and Associated Underwriters, Inc., complained to the Circuit Attorney of St. Louis, Missouri, that Appellant herein had committed embezzlement and converted to his own use premiums amounting to the afor

said sum; that Appellant was thereupon arrested and spent one day in jail; that on the following day, October 14, 1932, he was again arrested on said charge and remained in jail one day, and that on November 28, 1932, he was arrested and spent two days in jail; that subsequently, on December 2, 1932, an indictment was voted by the Grand Jury of the City of St. Louis against Appellant, in which he was falsely charged with having embezzled from Associated Underwriters, Inc. said sum of $2410.58; that a warrant was issued and Appellant was arrested and imprisoned in jail for eight days, at the expiration of which time he gave bond to answer said charge; that said cause subsequently came on for trial in said court and Appellant herein was found not guilty of said charge.

On the 24th day of August, 1934, Appellant filed his petition in the Circuit Court of the City of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., and Attorney Robert A. Roessel seeking collection of damages for his false arrest, and that proceeding resulted in the judgment involved in this case. A Liquidator was appointed for Chicago Lloyds by the Superior Court of Cook County on February 9, 1938, and on April 21, 1938, Robert A. Roessel, who had appeared as counsel of record for the defendants in the suit brought by the Appellant herein in the Circuit Court of the City of St. Louis, was notified by the Liquidator of Chicago Lloyds that he should not continue in the defense of said suit. After various proceedings in the Circuit Court of the City of St. Louis and in the Federal Court, to which said cause was removed and later remanded, it came on for trial in said Circuit Court on the 17th day of March, 1941. On that date Robert A. Roessel was dismissed as a defendant and,

although the remaining defendants were not present in court, either in person or by counsel, the record shows separate answers were filed on behalf of the remaining defendants (R. 34). Said purported answers denied the jurisdiction of the Court, denied that plaintiff was prevented from conducting his occupation as insurance agent as alleged in his petition for the reason that prior to October 13, 1932, his license as an insurance agent and/or broker was revoked by the Insurance Department of Missouri for cause and denied all of the allegations contained in plaintiff's petition. The plaintiff waived a jury, submitting the cause to the Court, and the case was then heard *ex parte*. It must be noted that although the orders procured or caused to be entered by the Appellant in the St. Louis Court on March 17, 1941 (R. 34), and on April 7, 1941 (R. 35), recite that *parties hereto* appeared in Court and the Appellant in his Brief states that the Liquidator desires to *again* try this cause, the record is clear that neither Chicago Lloyds or Associated Underwriters were present in Court either in person or by counsel. The Liquidator never appeared or participated in the proceedings in the St. Louis Court.

On March 22, 1941, the clerk of the St. Louis court, at the direction of the Judge, wrote a letter to the Special Deputy in charge of the liquidation of Chicago Lloyds at Chicago, Illinois, advising him of the status of that case in the St. Louis court; that the Court had heard the case, taken the same under submission and had directed the Clerk to inform the Special Deputy and requesting the Special Deputy to make known his position as the Court desired to pass judgment upon the matter (R. 38). On March 26, 1941, counsel for the Liquidator wrote the Clerk of the Court of St. Louis, Missouri, in reply to his

letter advising that Chicago Lloyds was being liquidated in proceedings pending in the Superior Court of Cook County, Case No. 38 S 1022, of the Order appointing the Director of Insurance of Illinois as Liquidator entered February 9, 1938, and that Attorney Robert A. Roessel had withdrawn at the Liquidator's request and that it was the Liquidator's position that plaintiff in said suit was enjoined from proceeding to obtain judgment against Chicago Lloyds and quoting that portion of the order of liquidation enjoining all persons from obtaining or attempting to obtain preferences, judgments, attachments or other liens (R. 43).

On April 7, 1941, a judgment in the sum of $50,000.00 was entered in favor of the Appellant by the Circuit Court of the City of St. Louis against the defendants, excepting Attorney Robert A. Roessel. On the 10th day of June, 1942, the Liquidator filed in the Superior Court of Cook County his Tenth Report on Claims, including, among others, the claim of appellant with his recommendation of allowance or disallowance as to said claims. Notice of the Report on Claims was mailed to all claimants and thereafter the claim of Appellant and his objections to the Liquidator's recommendation of disallowance were referred to a Master in Chancery for hearing.

In the proceedings before the Master, it was stipulated that Appellant (claimant) on and prior to the 20th day of September, 1938, had notice of the liquidation proceedings in the Superior Court of Cook County, Illinois, and of the Order of Injunction issued by that Court (R. 24).

Chicago Lloyds was not a corporation, but an unincorporated association created under and by virtue of the

section of the Insurance Code applicable to individuals transacting insurance business in the State of Illinois under the name of Lloyds (Article V, Insurance Code of 1937, Chapter 73, Sections 698 and subsequent, Illinois Revised Statutes of 1945). Its only authority to conduct business in the State of Illinois was contained in a Certificate of Authority issued under the provisions of Section 699 of Chapter 73 of Illinois Revised Statutes of 1945 This Certificate authorized Chicago Lloyds to transact business from the 1st day of July of the year of issuance to the 30th day of June of the following year, and unless renewed, its right to conduct an insurance business terminated at the expiration date of the existing certificate.

SUMMARY OF ARGUMENT.

I.

The Exclusive Right of an Illinois Liquidator and the Illinois Courts to Adjudicate Claims Against the Res of an Insolvent Illinois Insurance Company Is Established By the Illinois Statutes, the Illinois Decisions, and By the Decisions of This Court.

A. The Illinois statutes and decisions confer upon the liquidator of an insolvent Illinois Insurance Company the exclusive right to adjudicate claims against the *res* of the insolvent company, the title to which *res* is in the liquidator by virtue of the Illinois liquidation statutes (P. 9 to P. 13).

B. The decisions of the United States Supreme Court approve the right of a liquidator to administer the *res* of the insolvent company and to adjudicate claims against it in accordance with the local law (P. 13 to P. 21).

II.

The Illinois Liquidation Order Entered More Than Three Years Prior to Appellant's Judgment and the Illinois Liquidation Statutes Are Entitled to Full Faith and Credit. Appellant's Judgment Against a Non-Existent Statutory Entity Is Not Binding on the Liquidator.

A. The Illinois Liquidation Statute, and the prior liquidation and injunction decree of the Superior Court of Cook County, Illinois, should be given the same full faith and credit as is urged by Appellant for his judgment (P. 22 to P. 28).

B. Chicago Lloyds ceased to exist either upon entry of the liquidation order or by expiration of its certificate

of authority to do business, and the judgment taken thereafter a nullity (P. 28 to P. 33).

C. Appellant filed his claim in the liquidation proceedings, submitted to the jurisdiction of the liquidating court and is bound by the orders and proceedings therein (P. 33 to P. 34).

III.

The Decision of the Illinois Supreme Court Upholds a Liquidation Procedure for Illinois Insurance Companies Analogous to the Federal Bankruptcy Act. Appellant Seeks a Decision That Would Force the Illinois Liquidator to Defend Claims Pending at the Date of the Liquidation Order in Any of the Forty-Eight States.

A. The decisions of this Court recognize the exclusive jurisdiction of the states to liquidate insolvent insurance companies created by them, inasmuch as those companies are excluded from the Federal Bankruptcy Act (P. 38 to P. 39).

B. Orderly administration and equitable distribution of the estate of an insolvent insurance company for the equal protection of all creditors requires that the liquidation proceedings in Illinois be equally binding on all creditors (P. 39 to P. 42).

ARGUMENT.

Question Presented.

MAY IT PLEASE THE COURT:

The basic question here presented is: Whether a prior Illinois judgment which vests title in a liquidator to the *res* of an insolvent insurance company, organized and doing business under Illinois law on the Lloyds' plan, for distribution according to the Illinois Statutes, is entitled to priority over an *ex parte* judgment entered in Missouri against the insolvent insurance company more than three years after the entry of the liquidation order in the Illinois court. The Missouri claimant asserts that his judgment is entitled to full faith and credit against the Illinois liquidator, and that he need not prove up his claim in the Illinois liquidation proceedings in accordance with the liquidation decree and the Illinois Statutes.

The Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, the appellee herein, contends that the Illinois courts and the Illinois liquidator have the exclusive right to adjudicate claims against the *res* of Chicago Lloyds.

I.

The Exclusive Right of an Illinois Liquidator and the Illinois Courts to Adjudicate Claims Against the Res of an Insolvent Illinois Insurance Company Is Established By the Illinois Statutes, the Illinois Decisions, and By the Decisions of This Court.

Illinois Statutes and Decisions.

The provisions of the Illinois Insurance Code concerning the status, rights, and title of the liquidator of an

insolvent Illinois insurance company are set forth in the appendix.

Pursuant to the provisions of the Illinois Insurance Code, a liquidation order was entered in the Superior Court of Cook County, Illinois, against Chicago Lloyds on February 9, 1938. This was a final order. It was taken by consent due to the admitted insolvency of Chicago Lloyds (R. 3). By virtue of the liquidation order, the Director of Insurance of the State of Illinois, as liquidator, became vested with title to all the assets of Chicago Lloyds on February 9, 1938 (§ 191, Illinois Insurance Code, chap. 73, § 803, Ill. Rev. Stats. 1945), and was charged with the duty to notify all creditors to present their claims (§ 193, Illinois Insurance Code, chap. 73, § 805 Ill. Rev. Stats. 1945). All rights of creditors and all other persons interested in the assets of the Chicago Lloyds were fixed by order of court as of noon, February 15, 1938, pursuant to Section 194 of the Illinois Insurance Code (chap. 73, § 806, Ill. Rev. Stats. 1945). On February 9, 1938, pursuant to the provisions of Section 189 of the Illinois Insurance Code (chap. 73, § 801, Ill. Rev. Stats. 1945), the Illinois court entered an order enjoining the obtaining of preferences, judgments, attachments or other liens against the company and its assets while in the possession of the Director of Insurance as liquidator.

What rights of the liquidator over the assets of Chicago Lloyds were established by the foregoing liquidation and injunction order?

Here we face one of the determining factors of this case. The Supreme Court of the United States has frequently stated that the rulings of the State courts interpreting their local law are usually conclusive and entitled

to the highest respect of the Federal courts. Thus, in *Detroit* v. *Osborne*, 135 U. S. 492, at p. 499, the Supreme Court stated:

> "It may be said generally that whenever the decisions of the state courts relate to some law of local character, which may have become established by those courts, or has always been a part of the law of the State, that the decisions upon the subject are usually conclusive, and always entitled to the highest respect of the federal courts. The whole of this subject has recently been very ably reviewed in the case of *Burgess* v. *Seligman*, 107 U. S. 20. Where such local law or custom has been established by repeated decisions of the highest courts of a State, it becomes also the law governing the courts of the United States sitting in that State."

The Illinois Supreme Court, after examining its local liquidation statute in the instant case (391 Ill. 492) makes the following statement at page 499 (R. 77):

> "In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois statute for the liquidation of insolvent insurance companies."

The Court further said at page 506 (R. 83):

> "So, in this case, the title of appellee to the property and assets of Chicago Lloyds is based upon a judgment. While Missouri would have the power to give priority to Missouri creditors in the property of Chicago Lloyds located in that State, (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160) it has not done so; nor is there any proof there ever were any assets

in Missouri at the time appellant obtained a judgment. The Illinois decree appointing a liquidator vested title and possession in him. This was known to appellant, because he filed a claim with the liquidator, in accordance with the Illinois statute. The superior court of Illinois, by a decree finding insolvency, thus had obtained jurisdiction of the *res* by the law vesting title in liquidator, and such liquidator is entitled to keep and retain such possession to the exclusion of the process of any other court. (*Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457.) There being no Missouri law to the contrary this would likewise apply to the assets in Missouri. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Under the law both of Missouri and Illinois it is plain no possession could be had by virtue of a Missouri judgment entered long after a decree finding facts which would vest title in a liquidator. Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise recognize the binding effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts."

In *Evans* v. *Illinois Surety Company*, 319 Ill. 105, the Illinois Supreme Court held under a statute similar to the one involved in the present case that after the assets of a defunct insurance corporation had passed to a liquidator, a judgment taken against the corporation gave the plaintiff no rights against the liquidator. This case was cited favorably by the Illinois Supreme Court in the present case and its rule followed. The Illinois Supreme Court stated (R. 83):

> "*We have held under a similar law that a judgment against a corporation, after title to its assets had passed to a liquidator, gave plaintiff no rights.* (*Evans* v. *Illinois Surety Co.*, 319 Ill. 109.) The *Missouri court has reached substantially the same result.* (*McDonald* v. *Pacific States Life Ins. Co.*, 343

Mo. 1232, 124 S. W. 2d 1157.) The judgment of another State under the Federal statute enacted by authority of the full-faith-and-credit provision (28 U. S. C. A., sec. 687) is entitled to the *same* credit that it would have in the State of its rendition. *In Missouri, not only the statute, but the construction of the statute, is similar to the law of Illinois, and had a liquidator been decreed in the State of Missouri, appellant either could not have had his judgment or, if he obtained it after the decree of insolvency, could not have enforced it against the property in the hands of the liquidator.* He can have no greater rights in Illinois, under his judgment, than he could have in Missouri." (Italics ours)

In *People* v. *Niehaus*, 356 Ill. 104 at page 110, the Illinois Supreme Court, in discussing the powers of a liquidator under the Illinois Insurance Code, stated:

"• • • The Act gives him title to the assets of the insolvent company, and, contrary to the ordinary chancery receiver, this ownership and his powers are recognized in foreign jurisdictions."

The local law of Illinois is clear. It is well established that when an Illinois liquidator takes title to the *res* of an insolvent Illinois insurance company, judgments taken against the company subsequent thereto are not effective against the liquidator or the *res* in his possession.

Decisions of the United States Supreme Court

Having established what the local law of Illinois is, our next inquiry is whether this local law conflicts with the decisions of the Supreme Court of the United States. The decisions of the United States Supreme Court sustain the decision of the Illinois Supreme Court in the present case.

In the early case of *Relfe* v. *Rundle*, 103 U. S. 222, this Court in discussing the effect of a Missouri liquidation

proceeding involving an insurance company upon the nonresident creditors, policyholders and others, stated at page 226.

> "By the charter of this Corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the State, and he was charged with the duty of winding up its affairs. Every policyholder and creditor in Louisiana is charged with notice of this charter right which all interested in the affairs of the Corporation can insist shall be regarded. The appellees, when they contracted with the Missouri Corporation, impliedly agreed that if the Corporation was dissolved under the Missouri laws, the Superintendent of the Insurance Department of the State should represent the Company in all suits instituted by them affecting the winding up of its affairs."

In the case of *Clark* v. *Williard*, 292 U.S. 112, the question arose as to the binding effect of liquidation proceedings of an Iowa insurance company upon Montana creditors. This court indicated that the Iowa proceedings, transferring title to all the company's assets to the Iowa liquidator, were binding upon Montana creditors in the absence of a local policy of Montana providing that Montana creditors could proceed against assets located in Montana and thereby satisfy their claims. The decree of the Montana court was reversed by this court and remanded to enable the Montana court to determine whether there was such a local policy. The Montana Supreme Court determined that there was such a policy. That case again came before this court in *Clark* v. *Williard*, 294 U.S. 211. This court held that since Montana had a policy for the protection of local creditors out of assets located in Montana, the courts of Montana, in such a case, were not required

to give full faith and credit to the Iowa liquidation proceedings. This court said at page 213 (L.ed. 867):

> "Every state has jurisdiction to determine for itself the liability of property within its territorial limits to seizure and sale under the process of its courts. (Citing cases) Montana does not challenge the standing of this foreign liquidator as successor to the dissolved corporation or as owner of its assets. On the contrary his standing and ownership are now explicitly conceded. All that Montana does by the decree under review is to impose upon such ownership the lien of judgments and executions in conformity with local law. In this there is no denial to the statutes of Iowa or to its judicial proceedings of the faith and credit owing to them under the Constitution of the United States."

The Court further said on page 214 (L.ed. 868):

> "This is not to say that any uniform policy prevails among the states when liquidators and creditors thus compete with one another. The diversity of practice was pointed out, with citation of the precedents, when the case was here before. 292 U.S. 112, at p. 122, 78 L.ed. 1160, 1166, 54 S. Ct. 615. Some states prefer a rule of equal distribution and compel the local suitor to yield to the statutory successor. (*Martyne* v. *American Union F. Ins. Co.*, 216 N.Y. 183, 110 N.E. 502), though at times with precautionary conditions. 292 U.S. 112, at p. 129, 78 L.ed. 1160, 1170, 54 S. Ct. 615; *People* v. *Granite State Provident Asso.*, 161 N.Y. 492, 55 N.E. 1053. Other states give the local creditor a free hand, with the result that he may seize what he can find, though the assets of the debtor are dismembered in the process. *Lackmann* v. *Supreme Council, O.O.F.*, 142 Cal. 22, 75 P. 583; *Schloss* v. *Metropolitan Surety Co.*, 149 Iowa, 382, 128 N.W. 384; *Zacher* v. *Fidelity Trust & S. V. Co.*, 109 Ky. 441, 59 S.W. 493. Choice is uncontrolled, as between one policy and the other, so far as the Constitution of the nation has any

voice upon the subject. Iowa may say that one who is a liquidator with title, appointed by her statutes, shall be so recognized in Montana with whatever rights and privileges accompany such recognition according to Montana law. For failure to give adherence to that principle we reversed and remanded when the case was last before us. *Iowa may not say, however, that a liquidator with title who goes into Montana may set at naught Montana law as to the distribution of Montana assets, and carry over into another state the rule of distribution prescribed by the statutes of the domicile.*" (Italics ours)

Riehle v. *Margolies*, 279 U.S. 218, is perhaps the most important case relied upon by the appellant in support of his position. This case established the rule that a federal receiver must accept state court judgments adjudicating claims against a defunct company in a federal receivership. This decision was based upon Section 265 of the Judicial Code, which in substance provides that at the time of the institution of a receivership in a federal court, suits then pending in state courts could proceed to judgment. The decision in no wise affects the liquidator's position in the present case but, in fact, suppprts his position. For in discussing the distinction between chancery receiverships and statutory liquidation, the court in that case stated, at page 228:

"Similarly it has been held, where a statutory proceeding for the winding up of an insolvent corporation is brought in the state of the incorporation, that the assets will be distributed only among those persons who have been found to be creditors either by that court or elsewhere with its leave; and that a judgment recovered in another state without leave from it will not entitle the plaintiff to share in the assets. *These decisions are not inconsistent with the conclusion stated above.*" (*i. e.*, the decision of the case)

(Italics ours) (Citing *Attorney General* v. *Legion of Honor,* 196 Mass. 151; *Hackett* v. *Legion of Honor,* 206 Mass. 139, 142.)

In *Attorney General* v. *Supreme Council A. L. H.,* 196 Mass. 151, 81 N.E. 966, the Supreme Court of Massachusetts held that it is within the province of the court which had taken the assets of the insolvent into its hands for distribution to determine who the creditors are and what is due them, and that a judgment obtained in another court after the institution of the receivership proceedings binds only the insolvent and not the receiver. Thus that court stated, at page 967:

> "By the decree dated August 12, 1904, this court, acting under Rev. Laws, c. 119, § 19, adjudged that the further continuance of business by the defendant corporation was hazardous to the public and to its certificate holders, and it took possession of the funds of the defendant corporation for the purpose of distributing its assets among its creditors and of closing its affairs. This had no direct effect on pending actions. It had, however, this indirect effect upon them. If the plaintiff in such an action wanted a judgment against the defendant corporation for some purpose other than a right to share in the assets sequestrated by and in the hands of this court, he could go on with his action. But if he wished to establish his right to share in the assets in the possession of this court the further prosecution of that action would not help him. To establish that right he had to prove his claim in this court or get an order from this court that a judgment in the action in the foreign court should establish his right to share in the assets here. It is for the court which has taken the assets of an insolvent into its hands for distribution and for that court alone to determine who its creditors are and what is due to them respectively."

The *Supreme Council A. L. H.* case was followed by the Supreme Court of Illinois in *Evans* v. *Illinois Surety Company*, 319 Ill. 105, which, together with the instant case, is determinative of the local law of Illinois. A similar policy is expressed in *McDonald* v. *Aetna Indemnity Co.*, 93 Conn. 194; 105 Atl. 480, 483 (1919); *Bailey* v. *Groton Mfg. Co.*, 113. Vt. 309, 34 Atl. (2d) 182 (1943); *Danforth* v. *National Chemical Co.*, 68 Minn. 308; 71 N.W. 274.

The New York liquidation statute covering the liquidation of domestic insurance companies is similar to the Illinois statute. One who filed his claim in a liquidation proceeding in the State of New York and was served with a copy of the injunction order issued by that court, was held to be guilty of contempt of the New York court in subsequently filing a suit in the State of Virginia against the company then in process of liquidation, although the plaintiff was a resident of Virginia and was served with a copy of the injunction order in the State of Virginia. In the case of *In re Emmet, In re Richmond Radiator Co.*, 164 Appellate Division 586, 150 N.Y.S. 398, the court said, at p. 399, 400:

> "By filing its claim with the superintendent of insurance against the insolvent corporation, the liquidation of which the state had undertaken, and by the service of the order of this court of the 16th of December, 1912, upon the appellant, the Supreme Court acquired jurisdiction over the appellant, and it was bound to obey its order. • • • "
>
> "I have no doubt but that the court had jurisdiction to make the order. The said Empire Surety Company was a New York corporation. The Supreme Court of this state had instituted a proceeding to liquidate its business and apply its assets to the payment of its debts. All the property of the corporation, wherever situated, thereby vested in the superintend-

ent of insurance for the purpose of liquidation. The Supreme Court had jurisdiction to take possession of its assets and direct their application to the creditors of the corporation, and it had jurisdiction to restrain the creditors of the corporation from taking proceedings against it for the purpose of recovering their claims, and to restrain the creditors from interfering with the possession of the property by the superintendent of insurance. * * * The superintendent of insurance was entitled to receive from the state of Virginia the proceeds of the funds deposited by the said Empire Surety Company in the state of Virginia in excess of any liens to which it was subject. An attempt by a creditor of the said company to obtain a lien upon that fund in the state of Virginia was an attempt to deplete the property of the said company which would come into the possession of the liquidator for the purpose of being applied to the payment of the corporation debts.

"* * * The questions, it seems to me, are whether the court had jurisdiction, which I think it clearly had; whether the court acquired jurisdiction over the person of the appellant, which I think it clearly did; and whether the appellant, by filing its claim in the United States District Court for the Western District of Virginia, violated the provisions of this injunction order, which I think it clearly did. The appellant was therefore in contempt, and the court has the power to punish it for such contempt."

In *Harkin* v. *Brundage*, 276 U. S. 36, and *Penn General Casualty Company* v. *Pennsylvania*, 294 U. S. 189, this court established the rule that the court which first acquires jurisdiction over the *res* is entitled to retain it and dispose of it in accord with the law and processes of its jurisdiction.

In the case of *Porter* v. *Sabin*, 149 U.S. 473, this court expressed the rule as follows (p. 479):

"When a court exercising jurisdiction in equity ap-

points a receiver of all the property of a corporation, the court assumes the administration of the estate; the possession of the receiver is the possession of the court; and the court itelf holds and administers the estate, through the receiver as its officer, for the benefit of those whom the court shall ultimately adjudge to be entitled to it. *Wiswall* v. *Sampson*, 14 How. 52, 65; *Peale* v. *Phipps*, 14 How. 368, 374; *Booth* v. *Clark*, 17 How. 322, 331; *Union Bank* v. *Kansas City Bank*, 136 U.S. 223; *Thompson* v. *Phenix Ins. Co.*, 136 U.S. 287, 297.

"It is for that court, in its discretion, to decide whether it will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere. It may direct claims in favor of the corporation to be sued on by the receiver in other tribunals, or may leave him to adjust and settle them without suit, as in its judgment may be most beneficial to those interested in the estate. Any claim against the receiver or the corporation, the court may permit to be put in suit in another tribunal against the receiver, or may reserve to itself the determination of; and no suit, unless expressly authorized by statute, can be brought against the receiver without the permission of the court which appointed him. *Barton* v. *Barbour*, 104 U.S. 126; *Texas & Pacific Railway* v. *Cox*, 145 U.S. 593, 601."

From the foregoing authority it is clear that under the Illinois law the Illinois courts and the liquidator have the exclusive right to adjudicate claims against the *res* of an insolvent Illinois insurance company, the title to which has passed to the liquidator. This title and the right to administer the *res* and adjudicate claims in accordance with the local law is approved by the decisions of the Supreme Court of the United States.

Let us now apply this authority to the present case. Despite the fact that (1) title to all of the assets of Chicago

Lloyds was transferred to the Illinois liquidator on February 9, 1938; (2) appellant's claim was fixed as an unliquidated claim February 15, 1938; (3) an injunction order was entered enjoining claimant from securing judgments of which the appellant had notice, and by filing his claim was a party to the liquidation proceedings where the injunction was spread of record, appellant nevertheless recognizes the Illinois liquidator's title for the purpose of filing his claim and disregards it for the purpose of proving up his *ex parte* judgment in Missouri, entered not against the liquidator but against Chicago Lloyds, more than three years after the date of the Illinois liquidation order. He would disregard the judgment against Chicago Lloyds and treat it as a judgment against the liquidator so that he may share equally, with other creditors, in the *res*. Full faith and credit under such circumstances would amount to *res adjudicata* against the liquidator who was not a party to the appellant's judgment. It would entirely disregard the liquidator's title as recognized by Illinois and Missouri (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S.W. 2d 1157). It would likewise disregard appellant's fixed status as an unliquidated creditor, and the injunction order, and would confer greater rights on a Missouri creditor than on an Illinois creditor. A Missouri creditor could prove his claim outside the liquidation proceedings against the defunct company while an Illinois creditor would have to prove his claim in the liquidation proceedings against the liquidator.

II.

The Illinois Liquidation Order Entered More Than Three Years Prior to Appellant's Judgment and the Illinois Liquidation Statutes Are Entitled to Full Faith and Credit. Appellant's Judgment Against a Non-Existent Statutory Entity Is Not Binding on the Liquidator.

Appellant had notice by publication and mailing of the liquidation proceedings, and filed his unliquidated claim in the Illinois liquidation proceedings. As a creditor seeking to satisfy his claim against the Illinois *res*, he is bound by the Illinois statutes governing the liquidation of Chicago Lloyds. His rights were adjudicated at the time of the entry of the liquidation decree and his claim against the insolvent was fixed as an unliquidated claim subject to allowance or disallowance in accordance with the liquidation statutes of Illinois. The liquidation decree is *res adjudicata* of his rights (*Converse* v. *Hamilton*, 224 U. S. 243, 56 L. Ed. 749), and his subsequent judgment yields to the prior decree adjudicating his status as a creditor in the proceedings.

In its opinion in this case, the Supreme Court of Illinois said (R. 77):

> "If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds."

The Court further said (R. 84):

> "The title of appellee is acquired under the statutes of Illinois and a decree of one of its courts of general jurisdiction. No authority has been called to our at-

tention which gives a judgment acquired against the insolvent debtor, after its assets have been taken possession of and vested in a liquidator, priority over a judgment or decree which requires the distribution of the assets among those filing claims in pursuance of the law. Under such circumstances it seems logical to hold appellant was bound under the full-faith-and-credit clause to recognize the effect of this Illinois decree, as the courts of Illinois would be required to do had the judgment in Missouri been first made a lien, and since the liquidator appointed by the Illinois court acquired possession first, any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree."

The liquidation decree of the Superior Court of Cook County, Illinois, constitutes an adjudication of the status of appellant, as a creditor of Chicago Lloyds, and the judgment which he subsequently chose to take outside of the liquidation proceedings cannot be used to create a status for his claim in the liquidation proceedings different than that fixed by the decree of liquidation.

The judgment sought to be proved in these proceedings is against Chicago Lloyds. It is sought to establish that judgment against the liquidator of Chicago Lloyds, who was invested with the title to all of its assets more than three years prior to the entry of Appellant's *ex parte* judgment in Missouri. The full faith and credit clause of the Constitution, as applied to judgments, necessarily assumes an identity of parties plaintiff and defendant. The appellant herein is the plaintiff in the judgment sought to be established in these proceedings and there is identity of party plaintiff. The defendant in the judgment was Chicago Lloyds, and appellant seeks to compel recognition of that judgment by the Illinois Court against the Liquidator, who was not a party to the judgment. There is no identity

of party defendants. Had appellant made the Liquidator a party to his judgment, the full faith and credit clause might then have been applicable. The Liquidator being a stranger to the judgment, that judgment cannot be recognized in the liquidation proceedings.

Claimant relies upon the full faith and credit clause of the Constitution to compel recognition of his judgment in the liquidation proceedings in Illinois. The Liquidator urges that the Illinois Insurance Code governing the liquidation of Illinois insurance companies is likewise entitled to protection under the full faith and credit clause, that such statutory provisions are binding upon appellant and that his judgment taken in disregard of those proceedings is not entitled to recognition herein.

Section I of Article IV of the Federal Constitution provides in part:

> "Full faith and credit shall be given in every state to the public acts, records and judicial proceedings of every other state."

This provision not only confers recognition in sister states of judgments of the state of the forum, but it likewise applies to the public acts and records of a sister state.

In *Clark* v. *Williard*, 292 U. S. 112, the Federal Insurance Company, an Iowa corporation, was placed in liquidation by a decree of an Iowa Court on the 25th day of September, 1931. The Iowa statute governing the liquidation of Iowa insurance companies is, in many respects, similar to that of Illinois. Each statute provides for the vesting of title to assets of the defunct corporation in a state liquidating officer or receiver. On May 10, 1932, approximately eight months after the entry of the liquidation decree, a Montana creditor, the appellant, took judgment against the defunct company. Thereupon the judg-

ment creditor sought leave to issue execution and levy upon certain monies and securities of the defunct company located in Montana. The Supreme Court of Montana sustained his right to do so. Upon certiorari to this Court, the judgment of the Montana Supreme Court was reversed for the reason that the state court had failed to give due faith and credit under the Federal Constitution to the Iowa statutes governing the liquidation of Iowa insurance companies. This court said on page 121:

> "We think the Supreme Court of Montana denied full faith and credit to the statutes and judicial proceedings of Iowa in holding, as it did, that the petitioner was a receiver deriving title through a judicial proceeding, and not through the charter of its being and the succession there prescribed. 'When the transfer of a debtor's property,' said the court, 'is the result of a judicial proceeding there is no provision of the constitution which requires the courts of another state to carry it into effect and as a general rule no state court will do this to the prejudice of the citizens of its own state,' citing *Reynolds* v. *Adden*, 136 U.S. 348, a case of insolvency proceedings *in invitum* against a natural person, and *Zachèr* v. *Fidelity Trust Co.*, 106 Fed. 593, an enforced assignment to the receiver of a corporation which retained its corporate life. Bankruptcy or insolvency proceedings, whether the debtor is a natural or a juristic person, confer upon the receiver or assignee a title which, generally speaking, is without recognition outside of the state of his appointment except in subordination to the claims of local creditors. *Security Trust Co.* v. *Dodd, Mead & Co.*, 173 U.S. 624; *Cole* v. *Cunningham*, 133 U.S. 107; *Oakey* v. *Bennett*, 11 How. 33, 44; *Barth* v. *Backus*, 140 N.Y. 230; 35 N.E. 425; *Ward* v. *Connecticut Pipe Mfg. Co.*, 71 Conn. 345; 41 Atl. 1057; *Gilbert* v. *Hewetson*, 79 Minn. 326; 82 N.W. 655. Upon the strength of these and like decisions the Montana

court has refused recognition to a receiver or liquidator who in truth is a statutory successor. Whether it would have favored that conclusion if it had correctly interpreted his standing, its opinion does not tell us. The case should go back to the end that the priority of the execution may be determined with understanding of the title displaced and overridden."

In the case of *Bradford Electric Light Company* v. *Clapper*, 286 U.S. 145, 76 L. Ed. 1026, Clapper was employed by the Bradford Electric Light Company and both parties were citizens of the State of Vermont. While in the State of New Hampshire, Clapper suffered injuries which resulted in his death, and his widow brought suit against the electric company in the State of New Hampshire in a tort action, which action was permitted by the New Hampshire Workmen's Compensation Act and judgment was recovered, which judgment was affirmed by the Supreme Court of New Hampshire. In that case the electric company defended on the ground that since both parties were residents of Vermont and had agreed by contract to be bound by the Vermont Workmen's Compensation Law, the action could not be maintained in New Hampshire. This Court reversed the judgment of the Supreme Court of New Hampshire and held that the parties were subject to the Workmen's Compensation Law of the State of Vermont.

In that case the Court indicated in its opinion that there was no public policy of the State of New Hampshire which would prevent that State from giving full faith and credit to the Workmen's Compensation Law of the State of Vermont, and the Court intimated that, had there been a public policy of the State of New Hampshire which would have barred recognition of the Workmen's Compensation Law of Vermont, judgment of the lower court

would have had to be sustained. The Court said on page 161, (L. Ed. 1036):

"Moreover, there is no adequate basis for the lower court's conclusion that to deny recovery would be obnoxious to the public policy of New Hampshire. No decision of the state court has been cited indicating that recognition of the Vermont statute would be regarded in New Hampshire as prejudicial to the interests of its citizens. In support of the contention that the provision of the Vermont Act is contrary to the New Hampshire policy, it is urged that New Hampshire's compensation law is unique among workmen's compensation acts in that it permits the injured employee to elect subsequent to injury, whether to bring a suit based upon negligence or to avail himself of the remedy provided by the Act; and that the legislature of New Hampshire has steadily refused to withdraw this privilege. But the mere fact that the Vermont legislation does not conform to that of New Hampshire does not establish that it would be obnoxious to the latter's public policy to give effect to the Vermont statute in cases involving only the rights of residents of that State incident to the relation of employer and employee created there. *Northern P. R. Co.* v. *Babcock*, 154 U.S. 190, 198, 38 L. ed 958, 960, 14 S. Ct. 978. Nor does sufficient reason appear why it should be so regarded. The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears he had no dependent there. It is difficult to see how the State's interest would be subserved under such circumstances, by burdening its courts with this litigation."

The Court further said on page 163:

"We are of opinion that the rights as between the Company and Leon Clapper or his representatives are to be determined according to the Vermont Act. • • •"

In the absence of a contrary public policy, this Court held in that case that the Workmen's Compensation Law of Vermont was applicable and binding upon the parties involved in that proceeding, and the judgment of the Supreme Court of the State of New Hampshire was reversed for the reason that it had not given full faith and credit to the Statutes of Vermont. The public policy of this State with reference to the liquidation of insolvent insurance companies is expressed in our statute, and that statute, under the decisions heretofore cited, is entitled to full faith and credit in sister states. The public policy of Illinois expressed in that statute takes precedence over a judgment of a sister state which was taken in contravention of the laws of Illinois expressing that policy.

Chicago Lloyds was not a corporation, and there was, for that reason, no method provided for its dissolution under the Statutes of Illinois governing dissolution of insurance companies (Article XIII, Chapter 73, Paragraph 799, *et seq.*, Illinois Revised Statutes 1945). Those Statutes provide for the dissolution of corporations (Paragraph 808, Chapter 73). Inasmuch as Chicago Lloyds was authorized to transact business under an annual certificate, no dissolution proceedings were necessary as its legal existence expired either on February 9, 1938, the date the liquidation order was entered, or on June 30, 1938, at the expiration of its certificate of authority.

Under Paragraph 87 of Article V of the Insurance Code (Paragraph 699, Chapter 73, Illinois Revised Statutes 1945), it is provided that "it shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. All certificates of authority issued under the provisions of this

Article shall terminate on the 30th day of June next following the date of issuance and may be renewed upon compliance with this Code."

Any company, therefore, carrying on an insurance business under Article V of the Insurance Code could only do so under a certificate of authority which expired on the 30th day of June following its issuance, and the certificate of authority of the company known as Chicago Lloyds necessarily elapsed under this Section of the Insurance Code on the 30th day of June following the entry of the order of liquidation on February 9, 1938. If Chicago Lloyds had any legal existence after the entry of the liquidation order, that existence necessarily terminated on the 30th day of the following June when its certificate of authority to carry on business expired, and the company known as Chicago Lloyds was therefore out of existence over three years prior to the date the Appellant's judgment was entered, on the 7th day of April, 1941.

The law under such circumstances is that the entry of a judicial decree terminating the right of a company to continue to transact business is equivalent to an order dissolving the company.

Thus in the case of *In re National Surety Company*, 283 N. Y. 68; 27 N.E. (2nd) 505, Cert. den. 311 U.S. 707), the Court of Appeals of New York said on page 507:

> "Under the above circumstances, since the statutes of New York governing the dissolution of delinquent insurers provide that an order may be obtained directing the immediate cessation of the corporate existence, the corporate life of National Surety Company ceased for all purposes everywhere upon the obtaining of such an order by the Superintendent of Insurance and the common-law rule became applicable that upon dissolu-

tion of the corporation all actions pending or thereafter instituted abate and judgments thereafter entered are null and void. *Pendleton* v. *Russell,* 144 U. S. 640, 645, 12 S. Ct. 743, 36 L. Ed. 574; *First National Bank* v. *Colby,* 88 U. S. 609, 615, 21 Wall. 609, 22 L. Ed. 687; *Rodgers* v. *Adriatic Fire Ins. Co.,* 148 N.Y. 34, 38, 42 N.E. 515."

Even though it may be contended that the entry of an order of liquidation for an unincorporated insurance company does not terminate its legal existence, nevertheless, when the certificate issued by the Director of Insurance authorizing Chicago Lloyds to transact business in the State of Illinois for the year 1938 terminated on the 30th day of June, 1938, by virtue of the foregoing statutory provision, the legal existence of Chicago Lloyds was at an end. It no longer could sue or be sued any more than a corporation can be sued after its dissolution or an individual after his death. (*Pendleton* v. *Russell,* 144 U. S. 640, 36 L. Ed. 574; *Oklahoma Nat. Gas Company* v. *Oklahoma,* 273 U. S. 257, 71 L. Ed. 634; *In re National Surety Company,* 283 N. Y. 68, 27 N. E. (2nd) 505 (Certiorari denied 311 U. S. 707).)

A judgment against a dissolved corporation is a nullity. (*Pendleton* v. *Russell,* 144 U. S. 640, 36 L. Ed. 574; *Oklahoma Nat. Gas Company* v. *Oklahoma,* 273 U. S. 257, 71 L. Ed. 634; *Evans* v. *Illinois Surety Company,* 319 Ill. 105). For the same reason a judgment against an unincorporated insurance company against which an order of liquidation has been entered and whose certificate of authority to continue as an insurance company has expired, is void. Inasmuch as Appellant's judgment was taken more than three years subsequent to the order of liquidation of Chicago Lloyds and almost three years after the expiration

of the certificate authorizing Chicago Lloyds to engage in the insurance business, that judgment is void and the full faith and credit clause of the Federal Constitution has no application to it. (*Pendleton* v. *Russell,* 144 U. S. 640; 36 L. Ed. 574; *Evans* v. *Illinois Surety Company,* 319 Ill. 105.)

In *Pendleton* v. *Russell,* 144 U. S. 640, 36 L. Ed. 574, Pendleton held a policy of insurance in the Knickerbocker Life Insurance Company of New York. After he died, suit was brought and judgment obtained in the Circuit Court of the United States for the Western District of Tennessee. On appeal to the Supreme Court of the United States, this judgment was reversed. In the meantime the insurance company was placed in liquidation in the State of New York. Subsequently the suit pending in the Circuit Court of the United States for the Western District of Tennessee came on for trial and judgment was taken by default. A certified copy of this judgment was filed with the receiver of the insurance company in New York, and the claim was rejected by the receiver. After various intervening proceedings, the case was decided by the United States Supreme Court, which held that the judgment obtained in the Circuit Court of the United States for the Western District of Tennessee was void and was not entitled to recognition under the full faith and credit clause of the United States Constitution in the liquidation proceedings in New York. The Court said on page 644 (L. Ed. 576):

> "The only question presented for our determination is whether the judgment of the Circuit Court of the United States for the Western District of Tennessee, rendered on the 25th of January, 1886, was valid as a claim against the estate of the dissolved insurance corporation in the hands of its receiver,

to be allowed in the distribution of its assets. The Court of Appeals, in affirming the order of the supreme court of New York at special term, disallowing the claim, held that the judgment was invalid, and placed its decision on the ground that the United States Circuit Court had not, at the time, jurisdiction of the defendant, The error alleged is that the court, in this ruling, failed to give that faith and credit to the judgment of the Circuit Court of the United States to which it was entitled. * * *"

"Looking at the judgment of the Circuit Court of the United States, we are satisfied that the ruling of the Court of Appeals was correct. That Judgment purports to be against the insurance company, but that company, at the time, had no legal existence. It had been dissolved and its franchises, rights, and privileges declared forfeited by a decree of the Supreme Court of New York, in a proceeding brought by the attorney-general of the State, in the name of the people, and a receiver appointed of the effects of the corporation. The judgment was therefore no more valid against a non-existing corporation than it would have been if rendered for a like amount against a dead man. The receiver was not substituted in the place of the dissolved corporation; no process or citation was issued by that court to bring him before it, nor any proceeding taken for that purpose. Nor would such a proceeding have had any effect, for, the corporation having expired, the suit itself had abated. It ceased to be a pending suit; and if it were otherwise, the receiver could not take charge of any proceeding in a foreign jurisdiction by commencing an action, or defending an existing action, without the express authority of the court, whose officer he was, so as to bind any property or effects in his hands as receiver."

In accordance with the rule announced by this Court in the foregoing case, if the judgment of appellant is void,

the full faith and credit provision of the Constitution has no application to it.

Appellant, who filed his claim in the Illinois liquidation proceedings on September 21, 1938, has contended that he had no notice of the injunction order (Br. 81, 83) and was not bound by the order of liquidation entered on February 9, 1938, which under the provisions of the Illinois Statute (Sec. 806, Chap. 73, Illinois Revised Statutes of 1945) fixed all rights, liabilities and claims as of 12:00 o'clock noon, February 15, 1938, and enjoined claimants and creditors from obtaining preferences, judgments, attachments or other like liens.

The contention that claimant had no notice of the injunction order is contrary to the record which clearly shows that claimant had notice (R. 24). Furthermore we believe that the proposition is elementary and the rule fully supported by authority that a general creditor who files his claim under an interlocutory order or decree (appointing a receiver and requiring all creditors to file claims) becomes a party to the proceedings and is bound by the orders and decrees entered therein. *St. Louis-San Francisco Railway* v. *McElvain*, 253 Fed. 123.

The filing of a claim by a creditor in receivership proceedings is equivalent to intervention, and the claimant becomes a party to the proceedings and is bound by the orders and decrees entered therein. *Bethke* v. *Grayburg Oil Co.*, 89 Fed. (2d) 536.

In the case of *Schwartz* v. *Randolph*, 72 Fed. (2d) 892, the Circuit Court of Appeals for the Fourth Circuit, in its opinion, stated the rule as follows at page 893:

> "These considerations, however, did not deprive the District Court in the proper exercise of its jurisdiction over the affairs of the corporation, of the

power to receive the claims of creditors and pass upon their merits. Such a power in receivership proceedings is universally recognized. (*Riehle* v. *Margolies*, and other cases cited.) The practice is analogous to that in bankruptcy when, under the provisions of the statute, creditors submit their claims to the jurisdiction of the court. The filing of the claim in Maryland was itself a submission of the matter to the determination of the court, and it was none the less significant that it was done in response to a notice to creditors necessarily given by the court in the usual manner to expedite the settlement of the estate. * * *"

And further stated at page 894:

"It has already been noticed that Schwartz became a party to the receivership proceedings when he intervened in the case. Thereby he submitted himself to the jurisdiction of the court and became bound by the decree which enjoined the institution of actions against the corporation. * * *"

Claimant makes some mention (B. 20, 73) of the two-year statute of limitation being a bar to *de novo* proof of his claim in the liquidation proceeding. Claimant had a suit on file in Missouri within the two-year period of the statute of limitations. The Illinois liquidation order recognized this and established claimant's rights as an unliquidated creditor as of February 15, 1938, pursuant to the terms of Section 194 of the Illinois Insurance Code (Par. 806, Chap. 73 Illinois Revised Statutes of 1945). The statute of limitations is therefore no bar. Furthermore the statute of limitations had not been pleaded and is not an issue in this case, and the claim being in an equity court is not subject to the defense of the statute of limitations.

Appellant's brief is devoted almost entirely to the application of the full faith and credit clause of the Federal Constitution. Some mention is also made of a violation

of the privileges and immunities clauses of Article IV of the Federal Constitution and the fourteenth amendment, and the equal protection and due process clauses of the fourteenth amendment. Appellant concedes that his argument on the full faith and credit clause is determinative of the application of the other constitutional provisions (Brief p. 93).

Appellee has clearly demonstrated the inapplicability of the full faith and credit clause of the Constitution to make a judgment against Chicago Lloyds *res adjudicata* against the liquidator.

Most of the cases cited by Appellant in his Brief involved chancery receiverships and, as pointed out by this court in *Riehle* v. *Margolies*, 279 U. S. 218 (see p. 16 of this Brief), those proceedings are to be distinguished from statutory liquidation proceedings. It would, therefore, serve no good purpose to discuss those various cases. A few of the cases cited by Appellant will be briefly discussed.

Counsel for Appellant has placed considerable reliance upon the case of *Magnolia Petroleum Co.* v. *Hunt* 320 U.S. 430 (Brief 52 and 70). In that case, Hunt obtained an award for injuries sustained by him under the compensation law of Texas against the company and was paid in accordance with the award. Hunt later brought a suit under the Louisiana Workmen's Compensation law to recover a second time against the same company for the same injury. This Court held that the judgment in the first suit was an adjudication of his rights and that Louisiana would have to recognize that judgment under the full faith and credit clause of the Federal Constitution. That was a simple case of former adjudication. The full faith

and credit clause was resorted to for the sole purpose of compelling Lousiana Courts to recognize the judgment. The rule announced therein is universally recognized.

Here the judgment is against Chicago Lloyds. It is sought to establish that judgment against the Liquidator of Chicago Lloyds. There is not identity of parties defendant as in the *Magnolia* case, and the rule of that case is therefore inapplicable.

We have in this case a statutory proceeding for the liquidation of an Illinois insurance company, in which proceeding a decree was entered fixing the rights of Appellant and enjoining proceedings to obtain judgments, and vesting title to all assets in the Liquidator. These proceedings ante-dated the judgment by three years. These proceedings and the decree of the court adjudicated the rights of Appellant in so far as the assets of Chicago Lloyds were concerned. While he might continue his suit in Missouri and obtain a judgment, that judgment would bind no one except the judgment debtor, Chicago Lloyds. It could not bind the Liquidator who was not a party to it. The *Magnolia* case furnishes no precedent in this case.

The case of *Titus* v. *Wallick*, 306 U. S. 282, upon which Appellant places reliance (Brief 47 and 72) is another case involving the doctrine of former adjudication, and in that respect is similar to the *Magnolia Petroleum Co.* case. There was identity of parties plaintiff and defendant. Here we have no such identity. The judgment debtor is Chicago Lloyds and it is sought, under the full faith and credit clause, to establish that judgment against the liquidator, who was not a party to it.

Much reliance is placed by Appellant on the case of *Broderick* v. *Rosner*, 294 U.S. 629 (B. 48, 55, 72). Broderick was the superintendent of banks of the State of New York and, as such, the liquidator of the involvent Bank of the United States, a New York corporation. He determined that a stock assessment was necessary to pay the bank's creditors and in accordance with the statutes of New York, the assessment was levied. He brought suit in New Jersey to recover the assessments from the residents of that state. The New Jersey courts denied recovery because of a New Jersey statute prohibiting suits of that type in New Jersey courts, unless they took the form of equity suits in which all creditors and stockholders would be necessary parties, an obvious impossibility in most cases. This Court held that the New Jersey statute and the decision of its Supreme Court violated the full faith and credit provision of the Federal Constitution and reversed the case.

It is difficult to determine how that decision supports Appellant's position in this case. This Court in that case held that the New York statutes governing the liquidation of a New York bank were binding on the New Jersey stockholders of the bank and that a New Jersey statute barring the New York liquidator from suing in New Jersey to enforce stockholders' liability was unconstitutional. The doctrine announced by this Court in that case is the identical doctrine we urge here. This Court said at page 643:

> "Here the nature of the cause of action brings it within the scope of the full faith and credit clause. The statutory liability sought to be enforced is contractual in character. The assessment is an incident of the incorporation. Thus the subject matter is peculiarly within the regulatory power of New York as the State of incorporation 'so much so' as was said in

Converse v. *Hamilton*, 224 U. S. 243, 260, 'that no other state properly can be said to have any public policy thereon. And what the law of Wisconsin (New Jersey) may be respecting the relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and means of enforcing them, is apart from the question under consideration.' • • • In respect to the determination of liability for an assessment, the New Jersey stockholders submitted themselves to the jurisdiction of New York. For 'the act of becoming a member (of a corporation) is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile, membership looks to and must be governed by the law of the state granting the incorporation."

The rule announced by this Court in that case applied to the instant case requires full faith and credit to be accorded everywhere to the liquidation proceedings involving Chicago Lloyds. The Appellant was bound by those proceedings and his judgment taken in disregard of them and in contempt of the court's injunction is not entitled to recognition therein.

III.

The Decision of the Illinois Supreme Court Upholds a Liquidation Procedure for Illinois Insurance Companies Analogous to the Federal Bankruptcy Act. Appellant Seeks a Decision That Would Force the Illinois Liquidator to Defend Claims Pending at the Date of the Liquidation Order in Any of the Forty-Eight States.

The Federal Bankruptcy Act provides for exclusive adjudication of claims by the bankruptcy court and specifically excepts insurance companies from the provisions of that act (11 U.S.C. Sec 22 (a) and 22 (b)); *Valley* v. *Northern Fire & Marine Ins. Co.*, 254 U.S. 348. The Supreme Court has indicated its disapproval of federal equity receiv-

erships over insolvent insurance companies. *Commonwealth of Pennsylvania* v. *Williams*, 294 U. S. 176; *Gordon* v. *Ominsky*, 294 U. S. 186; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189. The liquidation of insolvent insurance companies is thus left to the states.

Many states recognize the title of the statutory liquidator in the state of the defunct company's domicil to all assets of the insolvent company. *Clark* v. *Williard*, 294 U. S. 211. Missouri recognizes the title of a foreign state liquidator to all of the assets of an insolvent insurance company. *McDonald* v. *Pacific States Life Insurance Company*, 343 Mo. 1232, 124 S. W. (2d) 1157. The issue which this Court must now decide is: Shall the Illinois Courts and the Illinois liquidator, with title to all the assets of Chicago Lloyds, have exclusive jurisdiction to adjudicate claims against these assets or may judgments be taken in sister states against the insolvent after the order of liquidation has been entered and be entitled to full faith and credit against the *Illinois liquidator* and paid out of the assets which he is marshalling and distributing?

The Appellee contends that all claims against the *res* in Illinois, consisting of the assets of Chicago Lloyds, the title to which is in the Liquidator, must be exclusively adjudicated by the Illinois courts and the Illinois liquidator. The appellant contends that a judgment taken in a foreign state, after the entry of the liquidation order, against Chicago Lloyds is binding on the liquidator, who was not a party to the judgment, and must be recognized by the liquidating court and paid out of the *res* in possession of the liquidator. What are the logical results of the rule contended for by the appellant?

This Court must hold that the full faith and credit clause of the Constitution requires that the Missouri judg-

ment against *Chicago Lloyds* be considered *res adjudicata* against the *Liquidator,* although he was not a party and did not present his defense to the original judgment proceedings. Furthermore, the liquidator would be required to defend claims pending against a company at the date of the liquidation order in the various states, thereby increasing the costs of the liquidation and reducing the amount distributable to creditors. Many fraudulent and fictitious claims might be reduced to judgment against the defunct company which would no longer be interested in defending against such claims. Such judgments and judgments by confession against the defunct company might become final and *res adjudicata* against the liquidator and the fund belonging to all creditors, even though the liquidator or the other creditors had no knowledge thereof. Such a rule disregards the fact that the *res* is being administered for all creditors. To allow a single creditor to recover in another forum a judgment which will have a conclusive effect in the distribution of the *res* belonging to all creditors is inconsistent with due process for such other creditors.

The instant case is an excellent example of the necessity of a liquidation statute binding on every one. Appellant, as an agent of Chicago Lloyds, became delinquent in the sum of $2,410.68 in his remittances to the company, (R. 31) and various extensions of time to pay were given by the company. He was finally arrested, on three occasions, charged with embezzlement, and spent one day in jail on each arrest (R. 32). The Circuit Attorney then presented the case to the Grand Jury, which returned an indictment charging appellant with embezzlement, and appellant, as he alleges, then spent eight days in jail. For some reason, which the record fails to disclose, appellant was found not

guilty of embezzlement, although his complaint admits a shortage in his accounts (R. 31). The Liquidator believed that appellant was bound by the liquidation statutes of Illinois and would, of necessity, have to make proof of his claim in the liquidation court. The trial court was so advised and no defense was made to the suit. The judgment resulted.

According to his uncontested allegations, he spent three days in jail because of his arrests and eight days in jail as a result of the indictment. That constituted his damage, except whatever damage may have resulted to his reputation because of the arrests. He alleges further damage in that he was prevented from continuing his business as an insurance agent (R. 33), but the record shows that his license to do an insurance business in Missouri had been revoked for cause by the Insurance Department of that State on October 13, 1932 (R. 34). Inasmuch as the first arrest of appellant on the embezzlement charge took place on October 14, 1932, he had been deprived by the State of his right to carry on an insurance business in Missouri prior to his first arrest and that alleged claim for damages is not tenable.

Had appellant proved his claim in the liquidation proceedings, it may well be that his recovery, if any, would have been much less than the amount of his judgment. This may account for his steadfast reliance upon the judgment.

Appellant has had an opportunity continuously since the date of the liquidation order to prove his claim in the liquidation proceedings in the same manner as all other creditors. Although he refused to make such proof (R. 44), it is conceivable, with leave of court, he could still

prove his claim *de novo*. Under the authorities cited in this brief, we urge that appellant's judgment is of no force and effect in the liquidation proceedings and that his sole recourse is to apply to the liquidation court for leave to prove his claim on the merits.

The position of the Illinois liquidator follows that of the Federal Bankruptcy Act and provides a single orderly process for adjudicating claims free from the inequitable results flowing from the rule urged by Appellant for adjudicating claims.

CONCLUSION.

The Illinois liquidator, the Appellee herein, submits that the decision of the Supreme Court of Illinois in this cause be affirmed by this Court on the merits, or in the alternative that this Court grant the liquidator's motion heretofore filed herein to dismiss appellant's appeal or to affirm the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX.

Illinois Statutes Involved
(Illinois Insurance Code of 1937)

(Chapter 73, Illinois Revised Statutes 1945)

"*Sec. 699. s 87. Certificate of Authority.* It shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. All certificates of authority issued under the provisions of this Article shall terminate on the thirtieth day of June next following the date of issuance and may be renewed upon compliance with this Code."

"*Sec. 799. s 187. Scope of Article.* This article shall apply to every company which is doing or attempting to do, or which is representing that it is doing an insurance business in this State or which is in process of organization for the purpose of doing or attempting to do such business."

"*Sec. 801. s. 189. Injunction.* The court shall have jurisdiction, at any time after the filing of the petition to issue an injunction restraining such company and its officers, agents, directors, employees and all other persons from transacting any company business or disposing of its property until the further order of the court. The court may issue such other injunctions or enter such other orders as may be deemed necessary to prevent interference with the proceedings, or with the Director's possession and control or title, rights or interests as herein provided or to prevent interference with the conduct of the business by the Director, and may issue such other injunctions or enter such other orders as may be deemed necessary to prevent waste of assets or the obtaining of preferences, judg-

ments, attachments or other like liens or the making of any levy against such company or its property and assets while in the possession and control of the Director."

"*Sec. 802. s 190. Order of Rehabilitation or Liquidation.* On the return of such order to show cause and after a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists for rehabilitation or liquidation and directing the Director to take possession of the property, business and affairs of such company and to rehabilitate or liquidate the same as the case may be. The Director shall be responsible on his official bond for all assets coming into his possession."

"*Sec. 803. s 191. Title to Property of Company.* The Director and his successor and successors in office shall be vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. The filing or recording of such order in the office of the Recorder of Deeds or the Registrar of Titles in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted."

"*Sec. 806. s 194. Rights and Liabilities of Creditors Fixed Upon Liquidation.* The rights and liabilities of the company and of its creditors, except those holding contingent claims, and of its policyholders, stockholders or members and of all other persons interested in its assets shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. The rights of claimants holding contingent claims on said date shall be determined as hereinafter provided."

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1946

No. 62

CHARLES R. MORRIS,

Appellant

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF THE SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AMICUS CURIAE

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IN THE

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APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF THE SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AMICUS CURIAE

This brief *amicus curiae* by the Superintendent of Insurance of the State of New York is respectfully submitted, pursuant to Rule 27, subdivision 9, of the Rules of this Court in support of the application for rehearing herein filed by the appellee, Director of Insurance of the State of Illinois.

Question Presented

Plaintiff sued Chicago Lloyds in Missouri prior to liquidation. The company was placed in liquidation in its domiciliary State, Illinois, and thereafter plaintiff entered a judgment by default in the Missouri action. Plaintiff filed

a proof of claim in the Illinois liquidation proceeding and presented the default judgment as sole proof of his claim. The question presented is whether the default judgment *per se*, entered subsequent to the date of the liquidation order in a sister state, is to be accepted by the liquidator as proof of the claim or whether plaintiff-claimant must prove his claim *de novo* on the merits in the Illinois liquidation proceedings.

Argument

The facts have been sufficiently set forth in the opinion of this Honorable Court handed down on January 20, 1947. We believe that as a matter of law, and in the interests of orderly and uniform liquidation, the decision of the Supreme Court of Illinois, reported in *The People* vs. *Chicago Lloyds*, 391 Ill. 492 (Nov. 19, 1945), should be affirmed.

In the State of New York a similar set of facts distinguished only as hereunder set forth, arose in the *Matter of the Liquidation of National Surety Company*, Claim of William F. Laughlin. The report of the liquidator in disallowing the claim, based upon a default judgment entered against the National Surety Company subsequent to liquidation in the State of Mississippi, was sustained and affirmed by the Supreme Court, New York County (N. Y. L. J., May 29, 1940) by the Appellate Division of the Supreme Court (258 A. D. 789), and by the New York Court of Appeals (283 N. Y. 68). Thereafter, certiorari was denied by this Honorable Court, 311 U. S. 707. We feel, therefore, that the rule of law has been sufficiently laid down to guide the liquidator in New York as to such matters.

The sole distinguishing feature between the *Laughlin* case and the case at bar arises out of the fact that in the National Surety Company proceeding the liquidation order contained a directive dissolving the corporate entity and charter, whereas in the Chicago Lloyds liquidation proceeding, the company being an unincorporated association, there was no provision in the Illinois law for a formal

dissolution and no such clause was incorporated in the liquidation order. Nevertheless, to all intents and purposes, the association was dissolved because its charter was not renewed at its expiration date pursuant to the applicable Illinois law.

In the opinion of Mr. Justice Douglas commenting upon the case of *Pendleton* v. *Russell*, 144 U. S. 640, reference is made to the fact that in the *Pendleton* case (just as in the *National Surety* case in New York), the corporation had been dissolved and "dissolution having operated, like death, as an abatement of the suit", the proof was disallowed. Mr. Justice Douglas stated that no such infirmity appears to be present in the Missouri judgment, and that the Illinois Supreme Court did not hold that the appointment of a liquidator operated as an abatement of the suit. Unfortunately, the opinion of the Illinois Supreme Court was silent as to the question of dissolution of the company and consequent abatement of the Missouri action.

It is not disputed that upon the entry of a liquidation order in the domiciliary state, to-wit, Illinois, title to all assets vest in the domiciliary liquidator. No question is involved herein as to the availability of assets in Missouri to execution and levy following the entry of the judgment there by the plaintiff. We maintain and respectfully submit that orderly administration and equitable distribution of the estate of an insolvent insurance company must be conducted in the domiciliary state under like rules and standards as to all creditors, so that they may be protected alike and without discrimination. To compel the liquidator to hire counsel and incur the expense of defending pending actions in every state of the Union outside of Illinois, following entry of a liquidation order, would, in our opinion, be to encourage waste, permit preferences and compel by necessity the application of different standards and methods of evaluating the claim of one creditor against hundreds of thousands submitted to and determined by the domiciliary liquidator in the home state.

Conclusion

In aid of uniform procedure and uniformity in the treatment of claims of all creditors in insurance liquidation proceedings, we respectfully urge this Honorable Court to grant the petition for rehearing. Upon the rehearing we urge that either the judgment of the court below be affirmed or the matter be remitted to such court so that it may determine as a matter of local Illinois law, the effect upon an unincorporated insurance company of the lapse of its license, the failure to renew the same and the appointment of a liquidator.

Respectfully submitted,

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1946

No. 62

CHARLES B. MORRIS, *Petitioner,*

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois, *Appellee.*

BRIEF OF THE STATE OF CALIFORNIA AS AMICUS CURIAE IN SUPPORT OF PETITION OF N. P. PARKINSON DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS FOR A REHEARING.

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In the Supreme Court
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STATEMENT.

The Attorney General of California respectfully submits this brief as amicus curiae in support of the petition of N. P. Parkinson, Director of Insurance of the State of Illinois for a rehearing because California is deeply and adversely affected by the decision of this Court herein rendered on January 20, 1947.

Because of time impediments and since we understand adequate petitions are being filed by both representatives of the State of Illinois and of the State of New York, as amicus curiae, setting forth pertinent material, we do not propose to undertake to do other than indicate the effect of the decision on California statutes and practices. It is hoped that this brief presentation will be of assistance to the Court in demonstrating the widespread effect and some undesirable results of its ruling.

CALIFORNIA INSURANCE CODE MADE INEFFECTIVE BY THE DECISION AND RESULTING DISCRIMINATION AGAINST CALIFORNIA RESIDENTS.

California Insurance Code section 1020(c) relating to a Court having jurisdiction over liquidation of an insurance company provides:

> "* * * the court shall issue such other injunctions or orders as may be deemed necessary to prevent any or all of the following occurrences:
> * * * * * * * *
> (c) The institution or prosecution of any actions or proceedings."

It is apparent that under the decision a resident of a foreign state, despite the injunction referred to in the section, may prosecute an action in a foreign state against an insurance company in liquidation in California. The section would forbid such action in California. Therefore, California residents would be discriminated against.

California Insurance Code section 1020(d) authorizes injunctions against:

> "(d) The obtaining of preferences, judgments, attachments, or other liens against such person or its assets."

Again the decision would nullify the section as it would give life to foreign judgments but the section would be binding on California judgments and residents, again causing discrimination against California.

California Insurance Code sections 1021 to 1024, inclusive,* provide for the time and method of filing a

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*Section 1021. "Upon the making of an order to liquidate the business of such person, the commissioner shall cause to be published notice to its policyholders, creditors, shareholders, and all other persons interested in its assets. Such notice shall require claimants to file their claims with the commissioner, together with proper proofs thereof, within six months after the date of first publication of such notice, in the manner specified in this article."

Section 1022. "Such notice shall be published in a newspaper of general circulation, published in the county in which the proceeding is pending, not less than once a week for four successive weeks. A copy of the notice, accompanied by an affidavit of due publication, including a statement of the date of first publication, shall be filed with the clerk of the court."

Section 1023. "A claim must set forth, under oath, on the form prescribed by the commissioner:

(a) The particulars thereof, and the consideration therefor.

(b) Whether said claim is secured or unsecured, and, if secured, the nature and amount of such security.

(c) The payments, if any, made thereon.

(d) That the sum claimed is justly owing from such person to the claimant.

(e) That there is no offset to the claim.

(f) Such other data or supporting documents as the commissioner requires."

Section 1024. "Unless such claim is filed in the manner and within the time provided in section 1021, it shall not be entitled to filing or allowance, and no action may be maintained thereon. In the liquidation, pursuant to the provisions of this article, of any domestic insurer which has issued policies insuring the lives of persons, the commissioner shall, within thirty days after the

claim upon insurance companies in liquidation. Under the decision it would appear that a claim filed on the basis of a judgment obtained after the entry of the order of liquidation in a foreign state would have to be allowed after the time limit set up in the California code, thus again discriminating against California residents and in favor of residents of foreign states.

California Insurance Code section 1058 provides as follows:

> "In any proceeding pending under the provisions of this article, the court in which such proceeding is pending shall have jurisdiction to hear and determine, in such proceeding, all actions or proceedings then pending or thereafter instituted by or against the person affected by a proceeding under this article."

The decision would appear to avoid this section entirely with respect to residents in foreign states who choose to litigate in such states. This section actually provides a specific remedy in the liquidation court for all claimants, regardless of residence, on an equal basis.

It is apparent from the provisions of the above sections that they are intended to provide for liquidation of insurance companies in a manner which affords

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last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him and to whom, according to the books of said insufer, there are amounts owing under such policies, and he shall set opposite the name of each person the amount so owing to such person. Each person whose name shall appear upon said list shall be deemed to have duly filed, prior to the last day set for the filing of claims, a claim for the amount set opposite his name on said list."

equal treatment for all, regardless of residence of any particular claimants. This meritorious purpose is voided by the decision of this Court and in fact places foreign claimants in an advantageous position over those residing in California.

PRACTICAL CONSIDERATIONS.

In almost every instance when the California Insurance Commissioner has obtained an order to liquidate an insurance company it has had extensive business in foreign states. The business of such companies has always been found to be somewhat chaotic. The Commissioner is charged with the handling of a business with which he is necessarily wholly unfamiliar. It often has happened that when such orders are made actions are brought in California to discharge the liquidator upon various grounds such as that there was no cause for his appointment. The State may not have sufficint funds to engage in widespread litigation or it has happened that company funds are tied up by writs of attachment or otherwise. This condition is often naturally forced upon a liquidator, resulting in his not being in a position to immediately engage in liquidation in various sections of the country. It is apparent, therefore, that due to these difficulties adequate defense of litigation in foreign states is impossible and, indeed, entry of default judgments are likely if the decision of this Court is to be deemed binding upon the liquidator.

One particular proceeding in California in the past provides examples of the chaos and inequity which would result from the decision. In that case thousands of non-cancelable income policies were terminated by the order of liquidation and the holders of those policies suffered damages. The question of the measure of damage was a novel one. Differences of opinion with respect thereto ranged from the fact that there was no damage suffered since the individual could not know that he would be disabled in the future, to the fact that the policy was entitled to the return of all of his premiums and that he was entitled to the amount in excess of his premium which he would have to pay to get a similar policy, even though such similar policies were not available. In that case the company had policy-holders in practically every state. If this company had been liquidated in each of the foreign states there doubtless would have been a variety of decisions rendered covering the whole range of contentions made.

Under the decision rendered by this Court it would appear that the judgment would have been binding upon the liquidator with the result that claimants in identical positions would have received widely different remedies.

Such a result is contrary to the basic purpose of liquidation proceedings, which purpose is to provide for orderly determination of claims and the ratable distribution of available funds to creditors on an equitable basis.

The liquidation proceeding last referred to further illustrates the fact that under the decision it would be necessary, simultaneously and in a multitude of complex law suits involving the same question, to have appeared in various foreign states. Such appearances on the part of the liquidator would have been impossible, resulting in untold inequities to claimants.

The only protection the California liquidator would have against the effect of the decision of this Court would be to take advantage of the provisions of section 1017 of the California Insurance Code* and dissolve the corporation concurrently with the order of liquidation. This would be a very undesirable procedure for the reason that dissolution is not always advisable, for it often happens that after an examination of the affairs of the company full liquidation can be avoided to the benefit of the claimants. (Cf. *Neblett v. Carpenter,* 305 U. S. 297, 305.)

Again, if the liquidator is required to defend actions in various parts of the United States it would be apparent that the expense would be tremendous. In fact, the expenditures would be such that it is conceivable that a considerable portion of the assets of the company would be wasted in defending litigation. This waste is one which necessarily will be borne by creditors already in a position to lose by reason of the liquidation.

*Section 1017. "In his application for an order for the liquidation of a domestic corporation, or at any time thereafter, the commissioner may apply for, and the court shall make, an order dissolving such corporation."

CONCLUSION.

It is hoped that the above will give to the Court some little idea of the tremendous impact of this decision upon the laws of California and those similarly situated. If the discrimination and the chaos it is reasonable to foresee can be avoided, it is sincerely hoped that this honorable Court will find a way to remedy the situation. On the legal aspects we respectfully refer this Court to the briefs of counsel for the parties to the action.

Dated, San Francisco, California,
February 17, 1947.

Respectfully submitted,

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T. A. WESTPHAL, JR.,
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IN THE

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OCTOBER TERM, A. D. 1946.

No. 62

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vs.

PAUL F. JONES, DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

Now comes the Appellee herein, N. P. Parkinson, Director of Insurance of the State of Illinois, and files this, his petition for a rehearing in the above entitled cause, and as grounds for said petition respectfully represents:

I.

This Case Should Be Remanded to the Illinois Supreme Court to Ascertain the Applicable Illinois Law.

The majority opinion at page 4 recognizes the well-established rule that a judgment against a corporation after its dissolution is a nullity, inasmuch as dissolution, like death, operates as an abatement of the suit. The

majority opinion further states "no such infirmity appears to be present in the Missouri judgment; *and the Illinois Supreme Court did not hold that the appointment of a liquidator for Chicago Lloyds operated as an abatement of the suit.*" (Italics ours.) The Illinois Supreme Court did not pass on this question which overshadows every other issue in this case and it remains undecided.

The undetermined issue is: Did the appointment of a liquidator for Chicago Lloyds on February 9, 1938 operate under Illinois law as a dissolution and thereby abate appellant's suit against it? Further, did the expiration on June 30, 1938, of the annual certificate which created Chicago Lloyds and authorized it to do business, abate appellant's suit against the company?

We have carefully checked the Illinois statutes and decisions, including the decision of the Illinois Supreme Court in the present case, and the statutes and decisions of other states but have found no answers to these questions. Section 87 of the Illinois Insurance Code (Ill. Rev. Stat. Chap. 73, Sec. 699) provides for the issuance of a Certificate of Authority to do business under the Lloyds' plan as follows:

> "It shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. *All certificates of authority issued under the provisions of this Article shall terminate on the thirtieth day of June next following the date of issuance and may be renewed upon compliance with this Code.*" (Italics ours.)

Chicago Lloyds was an entity created and given life by Illinois law. Each July 1st it had to be recreated by the renewal of its Certificate of Authority under Illinois law to continue its existence. Its Certificate of Authority terminated June 30, 1938. It was not renewed. This Cer-

tificate alone gave life to the entity, Chicago Lloyds, and was a prerequisite to its existence. The Supreme Court of Illinois has never decided under Illinois law whether a liquidation order or a termination of a Lloyds' Certificate of Authority after a liquidation order abates pending suits.

Appellant's judgment against Chicago Lloyds taken on April 7, 1941, more than three years after the liquidation order, and almost three years after Chicago Lloyds' Certificate of Authority terminated, is void if the Illinois law is that the liquidation order or the expiration of Chicago Lloyds' Certificate of Authority after the liquidation order abates the appellant's suit.

The Supreme Court of Illinois in *Evans* v. *Illinois Surety Company*, 319 Ill. 105, decided that a foreign judgment against an Illinois corporation after a receiver had been appointed for it, to which the receiver was not a party, was not provable against the receiver. The majority opinion in the present case concedes that the Illinois Supreme Court did not decide that appellant's suit abated on the appointment of a liquidator for Chicago Lloyds. The minority opinion states that the judgment of appellant was taken after Chicago Lloyds "had legally ceased to be." (Minority Opinion, page 3.) Thus, there is a grave doubt as to the validity of appellant's judgment under Illinois law.

In *Clark* v. *Williard*, 292 U. S. 112, in a similar situation, this court properly remanded the cause to the Supreme Court of Montana to ascertain whether under Montana law local creditors were preferred as to Montana assets in the liquidation of an insolvent insurance company.

We submit that this Court can be correctly advised of the Illinois law only by remanding this case to the Supreme Court of Illinois to ascertain whether under Illinois law appellant's suit abated when the liquidation order was

entered on February 9, 1938 or when Chicago Lloyds' Certificate of Authority to operate under the Illinois statutes terminated on June 30, 1938.

II.

Appellant's Rights Were Established by the Prior Liquidation Decree of the Illinois Court.

The decree of liquidation of Chicago Lloyds was entered on the 9th day of February, 1938. That decree fixed the rights of all creditors of Chicago Lloyds as of noon on the 15th day of February, 1938, in accordance with the provisions of Section 806, Paragraph 194 of Chapter 73 of the Illinois Revised Statutes (Appendix to Appellee's Brief, page 46). Under the doctrine of *Relfe* v. *Rundle*, 103 U. S. 222, the appellant was bound by the statutes of Illinois governing the liquidation of Chicago Lloyds, and court orders entered in pursuance of the said statutes. The liquidation order fixed appellant's rights as a creditor as of the 15th day of February, 1938, and appellant then possessed an unliquidated claim against Chicago Lloyds. By order of the Illinois court his claim was frozen as an unliquidated claim. That order, therefore, became *res judicata* of his rights as a creditor. While he was not personally served and did not appear at the time of the entry of this order by the Superior Court of Cook County, he subsequently, on the 21st day of September, 1938, became a party to the Illinois liquidation proceedings by filing his claim in this cause. By filing that claim, he became bound by the previous order fixing his rights as an unliquidated creditor as of the 15th day of February, 1938. *Bethke* v. *Grayburg Oil Company*, 89 Fed. (2d) 536; *Schwartz* v. *Randolph*, 72 Fed. (2d) 892.

Though appellant subsequently saw fit to adjudicate his

claim in the courts of Missouri, that adjudication could not change the effect of the previous adjudication of his rights in the Superior Court of Cook County, Illinois. We respectfully submit that the adjudication by the Illinois court of the appellant's rights was a final adjudication and the Full Faith and Credit Clause should not nullify the previous adjudication of appellant's rights by the Illinois court.

III.

The Illinois Court Should Not Be Required to Recognize the Missouri Judgment Taken in Violation of Its Injunction Order.

The majority opinion, on page 1 thereof, finds that "petitioner had notice of said (injunction) order" entered by the Superior Court of Cook County, Illinois. That notice was equivalent to service of the injunction order upon the appellant. He subsequently filed a claim in the Illinois court, which issued the injunction order, and thereby became a party to the proceeding where the injunction order was spread of record. No case has been cited and we do not believe any can be found in which the Supreme Court of the United States has compelled a state court to recognize a judgment taken in violation of the state court's injunction order by a party to that proceeding. If under the doctrine of *Relfe* v. *Rundle*, 103 U. S. 222, appellant was bound by the provisions of the Illinois statutes governing liquidation of Chicago Lloyds, he was bound by the injunction so issued by the Illinois court. He elected to file his claim with the Illinois court and became a party to the Illinois proceeding. Then in violation of that court's injunction order, he proceeded to obtain a judgment in Missouri. Under such circumstances, it is a substantial departure from the customary application of the Full Faith

and Credit Clause to compel the Illinois court to recognize appellant's Missouri judgment.

WHEREFORE, by reason of the foregoing grounds, it is respectfully urged that this petition for rehearing be granted and that this cause be remanded to the Supreme Court of the State of Illinois to determine under Illinois law the vital issue in this case as yet undecided, whether appellant's suit abated as of February 9, 1938, the date of the liquidation order, or on June 30, 1938, the date that Chicago Lloyds' Certificate of Authority to operate under the Illinois statutes expired, or that the judgment of the Supreme Court of Illinois be affirmed.

Respectfully submitted,

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Chicago, Illinois,
February 19, 1947.

I, Raymond G. Real, one of the counsel for the above named N. P. Parkinson, Director of Insurance of the State of Illinois, the appellee herein, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Raymond G. Real

Frankfurter J. 04.

SUPREME COURT OF THE UNITED STATES

No. 62.—October Term, 1946.

Charles B. Morris, Petitioner,
v.
Paul F. Jones, Director of Insurance of the State of Illinois.

On Writ of Certiorari to the Supreme Court of the State of Illinois.

[January 20, 1947.]

Mr. Justice Douglas delivered the opinion of the Court.

This case presents a substantial question under the Full Faith and Credit Clause (Art. IV, § 1) of the Constitution.

Chicago Lloyds, an unincorporated association, was authorized by Illinois to transact an insurance business in Illinois and other States. It qualified to do business in Missouri. In 1934 petitioner sued Chicago Lloyds in a Missouri court for malicious prosecution and false arrest. In 1938, before judgment was obtained in Missouri, respondent's predecessor was appointed by an Illinois court as statutory liquidator for Chicago Lloyds. The Illinois court fixed a time for the filing of claims against Chicago Lloyds and issued an order staying suits against it. Petitioner had notice of the stay order but nevertheless continued to prosecute the Missouri suit. At the instance of the liquidator, however, counsel for Chicago Lloyds withdrew from the suit and did not defend it, stating to the Missouri court that the Illinois liquidation proceedings had vested all the property of Chicago Lloyds in the liquidator. Thereafter petitioner obtained a judgment in the Missouri court and filed an exemplified copy of it as proof of his claim in the Illinois proceedings. An order disallowing the claim was sustained by the Illinois

Supreme Court against the contention that its allowance was required by the Full Faith and Credit Clause. 391 Ill. 492, 63 N. E. 2d 479.

The case was brought here by appeal. We postponed the question of jurisdiction to the merits. 328 U. S. —. Under the rule of *Roche* v. *McDonald*, 275 U. S. 449, 450, the question whether full faith and credit should have been given the Missouri judgment does not present a ground for appeal. But treating the jurisdictional statement as a petition for certiorari (Judicial Code § 237 (e), 28 U. S. C. § 344 (c)), that writ is granted; and we come to the merits of the controversy.

The Full Faith and Credit Clause and the statute which implements it (R. S. § 905, 28 U. S. C. § 687) require the judgments of the courts of one State to be given the same faith and credit in another State as they have by law or usage in the courts of the State rendering them. The Illinois Supreme Court concluded that compliance with that mandate required that precedence be given to the Illinois decree appointing the statutory liquidator. It held that title to all the property of Chicago Lloyds, wherever located, vested in the liquidator; that the liquidator was entitled to keep and retain possession of the property to the exclusion of the process of any other court; that although Missouri might give priority to Missouri creditors in the property of the debtor located there,[1] *Clark* v. *Williard*, 292 U. S. 112, the Missouri judgment could have no priority as respects Illinois assets; that if a liquidator had been appointed in Missouri, petitioner could not have obtained his judgment, or if he had obtained it, he could not have enforced it against the property in the hands of the Missouri liquidator, see *McDonald* v. *Pacific States Life Ins. Co.*, 344 Mo. 1, 124 S. W. 2d 1157; and that to dis-

[1] It does not appear that there is any property of the debtor in Missouri; nor was a liquidator appointed in Missouri.

allow the judgment in the Illinois proceedings is, therefore, to give it the same effect that it would have had under the same circumstances in Missouri.

First. We can put to one side, as irrelevant to the problem at hand, several arguments which have been pressed upon us. We are not dealing here with any question of priority of claims against the property of the debtor. For in this proceeding petitioner is not seeking, nor is respondent denying him, anything other than the right to prove his claim in judgment form. No question of parity of treatment of creditors, or the lack thereof (see *Blake* v. *McClung*, 172 U. S. 239), is in issue. Nor is there involved in this case any challenge to the Illinois rule, which follows *Relfe* v. *Rundle*, 103 U. S. 222, that title to all the property of Chicago Lloyds, wherever located, vested in the liquidator. Nor do we have here a challenge to the possession of the liquidator either through an attempt to obtain a lien on the property or otherwise. As pointed out in *Riehle* v. *Margolies*, 279 U. S. 218, 224, the distribution of assets of a debtor among creditors ordinarily has a "two-fold aspect." It deals "directly with the property" when it fixes the time and manner of distribution. No one can obtain part of the assets or enforce a right to specific property in the possession of the liquidation court except upon application to it. But proof and allowance of claims are matters distinct from distribution. They do not "deal directly with any of the property". "The latter function, which is spoken of as the liquidation of a claim, is strictly a proceeding *in personam*." *Id.*, p. 224. The establishment of the existence and amount of a claim against the debtor in no way disturbs the possession of the liquidation court, in no way affects title to the property, and does not necessarily involve a determination of what priority the claim should have. And see *Chicago Title & T. Co.* v. *Fox Theatres Corp.*, 69 F. 2d 60.

One line of cases holds that where a statutory liquidator or receiver is appointed, the court taking jurisdiction of the property draws unto itself exclusive control over the proof of all claims.[2] But the notion that such control over the proof of claims is necessary for the protection of the exclusive jurisdiction of the court over the property is a mistaken one. As Justice Beach of the Supreme Court of Errors of Connecticut aptly said, "The question is simply one of the admissibility and effect of evidence; and the obligation to receive a judgment in evidence is no more derogatory to the jurisdiction *in rem* than the obligation to receive in evidence a promissory note or other admissible evidence of debt." Beach, Judgment Claims in Receivership Proceedings, 30 Yale L. Journ. 674, 680.

Moreover, we do not have here a situation like that involved in *Pendleton* v. *Russell*, 144 U. S. 640, where it was sought to prove in a New York receivership of a dissolved corporation a judgment obtained in Tennessee after dissolution. The proof was disallowed, dissolution having operated, like death, as an abatement of the suit. No such infirmity appears to be present in the Missouri judgment; and the Illinois Supreme Court did not hold that the appointment of a liquidator for Chicago Lloyds operated as an abatement of the suit. Nor is it sought on any other ground to bring the Missouri judgment within the exception on which *Williams* v. *North Carolina*, 325 U. S. 226, rests, by challenging the jurisdiction of the Missouri court over either the parties or the subject matter. Nor is there any lack of privity between Chicago Lloyds

[2] *Attorney General* v. *Supreme Council*, 196 Mass. 151, 159, 81 N. E. 966 (receivership); *Hackett* v. *Supreme Council*, 206 Mass. 139, 142, 92 N. E. 133 (receivership).

The Illinois rule announced in the instant case is likewise applicable in receivership proceedings. *Evans* v. *Illinois Surety Co.*, 319 Ill. 105, 149 N. E. 802.

Contra: Pringle v. *Woolworth*, 90 N. Y. 502 (receivership). The federal receivership rule permits continuance of suits in other courts

and the Illinois liquidator. Cf. *Ingersoll* v. *Coram*, 211 U. S. 335, 362–364. There is no difference in the cause of action, cf. *United States* v. *California Bridge Co.*, 245 U. S. 337, whether Chicago Lloyds or the liquidator is sued. The Missouri judgment represents a liability for acts committed by Chicago Lloyds, not for those of the liquidator. The claims for which the Illinois assets are being administered are claims against Chicago Lloyds. The Missouri judgment represents one of them. There is no more reason for discharging a liquidator from the responsibility for defending pending actions than there is for relieving a receiver of that task. *Riehle* v. *Margolies, supra.*

Second. "A judgment of a court having jurisdiction of the parties and of the subject matter operates as *res judicata*, in the absence of fraud or collusion, even if obtained upon a default." *Riehle* v. *Margolies, supra*, p. 225. Such a judgment obtained in a sister State is, with exceptions not relevant here, see *Williams* v. *North Carolina*, 317 U. S. 287, 294–295, entitled to full faith and credit in another State, though the underlying claim would not be enforced in the State of the forum. *Christmas* v. *Russell*, 5 Wall. 290; *Fauntleroy* v. *Lum* 210 U. S. 230; *Roche* v. *McDonald, supra; Titus* v. *Wallick*, 306 U. S. 282, 291. It is no more important that the suit on this underlying claim could not have been maintained in Illinois after the liquidator had been appointed than the fact that a statute of limitations of the State of the forum might have barred it. See *Christmas* v. *Russell, supra; Roche* v. *McDonald, supra.* And the Missouri judgment may not be defeated by virtue of the fact that under other circumstances peti-

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at least where they were pending at the time of the appointment of the receiver. *Riehle* v. *Margolies, supra.* And see *Chicago Title & T. Co.* v. *Fox Theatres Corp., supra*, and *Dickinson* v. *Universal Service Stations*, 100 F. 2d 753, 757, applying the *Riehle* ruling to a suit started in a state court after the receivership. For collection of cases see 96 A. L. R. 485.

tioner might not have been able to obtain it in Missouri or to have received any benefit from it there, as, for example, if a liquidator had been appointed for the debtor in Missouri prior to judgment. The full faith and credit to which a judgment is entitled is the credit which it has in the State from which it is taken, not the credit that under other circumstances and conditions it might have had. Moreover, the question whether a judgment is entitled to full faith and credit does not depend on the presence of reciprocal engagements between the States.

Under Missouri law petitioner's judgment was a final determination of the nature and amount of his claim. See *Pitts* v. *Fugate*, 41 Mo. 405; *Central Trust Co.* v. *D'Arcy*, 238 Mo. 676; *State ex rel. Robb* v. *Shain*, 347 Mo. 928. That determination is final and conclusive in all courts. "Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment". *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 439–440. For the Full Faith and Credit Clause established "throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered". *Id.*, p. 439. And see *Riley* v. *New York Trust Co.*, 315 U. S. 343, 348–349. The nature and amount of petitioner's claim may not, therefore, be challenged or retried in the Illinois proceedings.

As to respondent's contention that the Illinois decree, of which petitioner had notice, should have been given full faith and credit by the Missouri court, only a word need be said. *Roche* v. *McDonald, supra*, pp. 454–455, makes plain that the place to raise that defense was in the Missouri proceedings. And see *Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66, 77. And whatever might have been the ruling on the question, the rights of the parties could have

been preserved by a resort to this Court which is the final arbiter of questions arising under the Full Faith and Credit Clause. *Williams* v. *North Carolina*, 317 U. S. 287, 302. In any event the Missouri judgment is *res judicata* as to the nature and amount of petitioner's claim as against all defenses which could have been raised. *Roche* v. *McDonald, supra; Milwaukee County* v. *White*, 296 U. S. 268, 275; *Magnolia Petroleum Co.* v. *Hunt, supra*, p. 438.

It is finally suggested that since the Federal Bankruptcy Act provides for exclusive adjudication of claims by the bankruptcy court [3] and excepts insurance companies from the Act (§ 4, 52 Stat. 840, 845, 11 U. S. C. § 22; *Vallely* v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348), the state liquidators of insolvent insurance companies should have the same control over the determination of claims as the bankruptcy court has. This is to argue that by reason of its police power a State may determine the method and manner of proving claims against property which is in its jurisdiction and which is being administered by its courts or administrative agencies. We have no doubt that it may do so except as such procedure collides with the federal Constitution or an Act of Congress. See *Broderick* v. *Rosner*, 294 U. S. 629. But where there is such a collision, the action of a State under its police power must give way by virtue of the Supremacy Clause. Article VI, Clause 2. There is such a collision here. When we look to the general statute which Congress has enacted pursuant to the Full Faith and Credit Clause, we find no exception in case of liquidations of insolvent insurance companies. The command is to give full faith and credit to every judgment of a sister State. And where there is no jurisdictional infirmity, exceptions have rarely, if ever, been read into the constitutional provision or the Act of Congress in

[3] See *In re Paramount Publix Corp.*, 85 F. 2d 42, and cases collected in 106 A. L. R. pp. 1121 *et seq.* Cf. *Robinson* v. *Trustees*, 318 Mass. 121, 60 N. E. 2d 593; *In re Chicago & R. I. Ry. Co.*, 121 F. 2d 785.

cases involving money judgments rendered in civil suits. *Magnolia Petroleum Co.* v. *Hunt*, *supra*, p. 438; *Williams* v. *North Carolina*, 317 U. S. 287, 294, footnote 6.

The function of the Full Faith and Credit Clause is to resolve controversies where state policies differ. Its need might not be so greatly felt in situations where there was no clash of interests between the States. The argument of convenience in administration is at best only another illustration of how the enforcement of a judgment of one State in another State may run counter to the latter's policies. But the answer given by *Fauntleroy* v. *Lum*, *supra*, is conclusive. If full faith and credit is not given in that situation, the Clause and the statute fail where their need is the greatest. The argument of convenience, moreover, proves too much. In the first place, it would often be equally appealing to individuals or corporations engaging in multistate activities which might well prefer to defend law suits at home. In the second place, against the convenience of the administration of assets in Illinois is the hardship on the Missouri creditor if he were forced to drop his Missouri litigation, bring his witnesses to Illinois, and start all over again. But full faith and credit is a more inexorable command; its applicability does not turn on a balance of convenience as between litigants. If this were a situation where Missouri's policy would result in the dismemberment of the Illinois estate so that Illinois creditors would go begging, Illinois would have such a large interest at stake as to prevent it. See *Clark* v. *Williard*, 294 U. S. 211. But, as we have said, proof and allowance of claims are matters distinct from distribution of assets.

The single point of our decision is that the nature and amount of petitioner's claim has been conclusively determined by the Missouri judgment and may not be relitigated in the Illinois proceedings, it not appearing that the Missouri court lacked jurisdiction over either the parties or the subject matter. We do not suggest that petitioner

by proving his claim in judgment form can gain a priority which he would not have had if he had to relitigate his claim in Illinois. And, as we have said, there is not involved in this case any rule of distribution which departs from the principle of parity as between Illinois creditors and creditors from other States. See *Clark* v. *Williard*, 294 U. S. 211; *Blake* v. *McClung*, *supra*.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 62.—October Term, 1946.

Charles B. Morris, Petitioner,
v.
Paul F. Jones, Director of Insurance of the State of Illinois, Respondent.

On Writ of Certiorari to the Supreme Court of the State of Illinois.

[January 20, 1947.]

Mr. Justice Frankfurter, with whom concur Mr. Justice Black and Mr. Justice Rutledge, dissenting.

So far as they are relevant to the question before us, the facts of this case may be briefly stated. As part of its policy in regulating the insurance business, Illinois has formulated a system for liquidating the business of any Illinois insurance concern that falls below requisite standards. To that end it has provided that the title to the assets of such an Illinois concern should, upon the approval of the Illinois courts, pass to a State officer known as a liquidator. A further provision of the State law defines the procedure for enforcing claims against the assets in Illinois that have thus passed into the liquidator's hands. Claims against such assets must be proved to the satisfaction of the liquidator, subject to appropriate judicial review of his determinations.

It is not in question that the Illinois assets of Chicago Lloyds, an Illinois insurance concern, passed into the ownership of an Illinois liquidator in due conformity with Illinois law. Chicago Lloyds had also done business in Missouri under a Missouri license. While the Illinois assets were being administered by the Illinois liquidator, Morris, a Missouri claimant, pressed against Chicago Lloyds in a Missouri court an action for damages begun while the company was still solvent. Without substitution of the Illinois administrator or appearance by him, Morris obtained a judgment in the Missouri Court against

Chicago Lloyds. Apparently, there were no assets in Missouri against which this judgment could go. Thereupon the Missouri judgment-creditor asserted a claim in the distribution of the Illinois assets on the basis of the Missouri judgment. The liquidator declined to recognize the Missouri judgment as such, maintaining that the Missouri creditor must prove his claim on its merits, precisely as did Illinois creditors. The Superior Court of Cook County sustained the liquidator and disallowed the claim based on the Missouri judgment. Disallowance was affirmed by the Supreme Court of Illinois. 391 Ill. 492. The question now here is whether in disallowing the claim based on the Missouri judgment against Chicago Lloyds, Illinois failed to give full faith and credit to the judgment of a sister State, as required by Article IV, § 1 of the Constitution, and 1 Stat. 122, 2 Stat. 299, 28 U. S. C. § 687.

We have under review a decision of the Illinois Supreme Court regarding the mode of proving claims against Illinois assets of an Illinois insurance company in liquidation in an Illinois court. The issue before us must be determined, however, as though the construction which the Illinois Supreme Court placed upon the Illinois law had been spelt out unambiguously in the legislation itself. And so the real issue is this. May Illinois provide that when an insurance concern to which Illinois has given life can, in the judgment of the State courts, no longer be allowed to conduct the insurance business in Illinois, the State may take over the local assets of such an insurance concern for fair distribution among all who have claims against the defunct concern? May the State, pursuant to such a policy, announce in advance, as a rule of fairness, that all claims not previously reduced to valid judgment, no matter how or where they arose, if they are to be paid out of assets thus administered by the State, must be proven on their merits to the satisfaction of Illinois? And

may the State specify that this mode of proof apply also to out-of-State creditors so as to require such creditors to prove the merit of their claims against the Illinois assets in liquidation as though they were Illinois creditors, and preclude them from basing their claims merely on a judgment against the insurance concern, obtained after it had legally ceased to be, and after its Illinois assets had by appropriate proceedings passed into ownership of an Illinois liquidator?

It is safe to say that State regulation of the insurance business is as old and as pervasive as any regulatory power exercised by our States. See, *e. g.*, *Osborn* v. *Ozlin*, 310 U. S. 53; *Hoopeston Co.* v. *Cullen*, 318 U. S. 313. Not even the banking business, of which, after all, insurance is another phase, has been subjected to such continuous and extensive State surveillance. But while banking has increasingly been absorbed by federal regulation, the reverse has been true as to insurance. Indeed after a pronouncement by this Court that insurance partakes of commerce between the States, Congress by prompt legislation delegated or relegated the regulation of insurance, with appropriate exceptions, to the diverse laws of the several States. See *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. —.

We are concerned here solely with the situation presented by a State's exercise of its power over the liquidation of the assets of an insurance company of its own creation. It is important to remember that in this as well as in other connections rights are largely dependent on procedure. It seems, therefore, difficult to believe that when the property of a domestic insurance company within the confines of a State comes into the State's hands for the fair administration of still unliquidated claims against that property, the State may not provide a rule of parity in proving the amount of all claims which are to be paid out of the common pot. We assume, of course, that

the procedure prescribed is consistent with the requirements of due process, and not in conflict with overriding federal legislation. It is not suggested that the procedure which Illinois affords does not satisfy these requirements. Standing by itself, such a rule of administration would not be beyond the authority of a State. We must assume it to be Illinois law that the power to pass upon claims against property of a defunct Illinois insurance company is lodged in the liquidator and that such power is not to be foreclosed by a judgment against the defunct concern after title passes to the liquidator. Does the Full Faith and Credit Clause cut the ground from under such a State law as to judgments obtained outside the State after the control of the company and its assets had passed to the State?

Concededly, after the title to the Illinois assets of Chicago Lloyds has passed to the Illinois liquidator, it would not be open to a citizen of Illinois to obtain in the courts of Illinois, so as to serve as a basis of a claim in Lloyds Illinois assets, such a judgment as Morris, a citizen of Missouri, secured in the Missouri courts. It is thought, however, that because of Article IV, § 1, of the Constitution, Illinois could not deny such a superior right to the Missouri citizen without denying full faith and credit to the Missouri judgment. But the Full Faith and Credit Clause does not imply that a judgment validly procured in one State is automatically enforceable in another, quite regardless of the consequences of such enforcement upon that State's policy in matters peculiarly within its control. The Full Faith and Credit Clause does not eat up the powers reserved to the States by the Constitution. That clause does not embody an absolutist conception of mechanical applicability. As is so often true of constitutional problems, an accommodation must be struck between different provisions of the Constitution. When rights are asserted in one State on the basis of a judgment

Alaska Packers Assn. v Comm'n, 294 U.S. 532, 546.

procured in another, it frequently becomes necessary, as it does here, to define the duty of the courts of the former State in view of that State's power to regulate its own affairs.

The Full Faith and Credit Clause does not require a State to provide a court for enforcing every valid sister State judgment, even if its courts enforce like judgments in general. *Anglo-Am. Prov. Co.* v. *Davis Prov. Co. No. 1*, 191 U. S. 373. Again, a judgment in one State determining the validity of a will is not a judgment binding on another although it controls issues of succession in the first State. *Robertson* v. *Pickrell*, 109 U. S. 608; *Overby* v. *Gordon*, 177 U. S. 214. Surely, the Full Faith and Credit Clause does not require a State to give an advantage to persons dwelling without, when State policy may justifiably restrict its own citizens to a particular procedure in proving claims against a State fund. But that precisely might be the result if Illinois had to accept at face value judgments obtained outside Illinois against a defunct Illinois insurance concern after the Illinois assets had passed to the Illinois liquidator.

Precedent and policy sustain the right of Illinois to have each claimant prove his fair share to the assets in Illinois by the same procedure. Chicago Lloyds is an Illinois entity doing business in Illinois according to conditions which Illinois had a right to fix for engaging in the insurance business in Illinois. Illinois initiated her policy for liquidating insurance companies in 1925. Lloyds was first authorized to do business in 1928, and thereafter renewed annual authority was required. Missouri gave Lloyds entry in 1932, and later renewed its authority for additional one-year periods. Thus, Illinois gave advance notice that if Chicago Lloyds should fall short of those standards of solvency and safety appropriate for an insurance concern, it will, through a liquidator, seize the Illinois assets of Chicago Lloyds for the protection of all claim-

ants as to the merits of their claims. It warned the world that when such a situation arose claims against assets in Illinois must be proven in the manner which Illinois has here required. The authorization to do Lloyds business in Illinois created against the Lloyds assets in Illinois a sort of equitable lien, to speak freely but not too loosely, to become effective at insolvency and liquidation. To require that all claims against the estate in Illinois liquidation should be established on their merits in the Illinois proceedings may well have been deemed by Illinois the only way to protect the estate against foreign judgments which the Illinois liquidator might have no adequate means of contesting. It is irrelevant whether in this or in any other particular situation the liquidator could have contested a suit outside of Illinois. Certainly nothing can turn on whether the Illinois liquidator appears specially in the foreign litigation to assert the liquidation of the company and the vesting of title to its assets in the State of Illinois. We are concerned here with the respect that is to be accorded to a judgment secured against the company by appropriate procedure in another State. Either such a judgment, obtained after the title to the Illinois assets vested in the Illinois liquidator, could be proven for the face value of the judgment, or it could not. The respect to be accorded such a judgment must turn on the control which Illinois may constitutionally exercise in the administration of Illinois property. Relevant to that issue of power is not whether in a particular suit the liquidator could have protected himself by entering as a litigant in the suit in another State. What is relevant is whether Illinois may deem that its liquidator might not be able adequately to defend the estate in liquidation in every State in which a suit might be pressed to judgment. What is relevant also is whether in such liquidation proceedings Illinois can refuse to accept at face value a judgment against an Illinois insurance company obtained after that

company had ceased to exist, a judgment which the creditor would enforce against assets which passed to the State before the judgment was obtained.

Due regard for the relations of the States to one another, expressed by appropriate respect by one for the judicial proceedings of another, does not require that the provisions carefully established by Illinois for the proper safeguarding of these Illinois assets should be disturbed by judgments secured outside of Illinois after the very contingency for which Illinois provided had become a reality. It would be unfair thus to subordinate the primary and predominant interest of Illinois simply because the Illinois entity was allowed to enter Missouri. Missouri, like every other State, in admitting Chicago Lloyds had notice of the congenital limitations, so far as Illinois assets were concerned, under which Chicago Lloyds came into being. And so, when Missouri admitted Chicago Lloyds, it admitted an Illinois insurance concern with full knowledge of what Illinois would exact, in case trouble arose, to the extent of assets within the control of Illinois. Of course Missouri has a right to provide for its methods of administration, in case of default, as to Missouri assets. But we are not here concerned with an attempt to enforce the Missouri judgment against Missouri assets. We put to one side whether Illinois law could pass title to Missouri assets to the Illinois liquidator. See *Clark v. Williard*, 294 U. S. 211. We do say that it is not within the power of any other State, by admitting the Illinois entity, to effect discrimination against the citizens of Illinois in the distribution of Illinois assets that had passed to the State, for the fair distribution of which Illinois had formulated an appropriate method of proof.

This analysis assumes a heavier burden than the case makes necessary. It is not merely that Missouri had notice of the conditions under which Chicago Lloyds was doing business in Illinois and thereby charged all its citi-

zens with knowledge of the limited power of Missouri to affect Illinois assets upon liquidation. The Missouri claimant had actual notice that the Illinois assets had passed to the Illinois liquidator and that he was at liberty to come into the Illinois proceedings to prove his claim. The Missouri claimant had in fact come into the Illinois proceedings and filed his claim with the Illinois liquidator before he pressed his Missouri suit to judgment. It is a strong thing to say that Illinois could not say that under these circumstances the Missouri claimant must prove his claim the way every claimant in Illinois was bound to prove his. Surely the Constitution of the United States does not bar legislation by Illinois which provides a fair sifting process for determining the amount of claims against Illinois assets of an Illinois insurance company in liquidation in an Illinois court so as to secure equality of treatment for all who assert claims against such a fund. The Full Faith and Credit Clause does not impose upon Illinois a duty to allow the face value of a judgment against the insurance company secured in Missouri after the company's assets had passed into the possession of the Illinois court, in a proceeding to which the Illinois liquidator was not a party and could not have been made one.

The precise relation of the liquidator's legal position to the Missouri judgment, on the basis of which Morris asserts a claim against the liquidator's assets, reinforces the more general considerations. Morris had no judgment against the company when by Illinois law title to Lloyds' assets passed to the liquidator. The mere institution of the Missouri suit gave Morris no greater right to the Illinois assets of Lloyds than he had before the action was begun. By the time he obtained his judgment in Missouri, the company no longer had title to any assets in Illinois to which the judgment might attach. By unassailable Illinois law, Lloyds' assets had passed to the liquidator. These assets could be reached only by valid judg-

ment against him. In this respect, the law of Illinois controlling the liquidation of Lloyds, as authoritatively given us by the Supreme Court of Illinois, is decisively different from what this Court found to be the law of Illinois regarding the Illinois surety company in process of dissolution in *Ewen* v. *American Fidelity Company*, 261 U. S. 322. The liquidator was not a party to the Missouri action; he had not been served; he had not appeared; he expressly denied the right of Lloyds to represent and bind the Illinois liquidation estate. The authority with which Illinois clothed its liquidator put him under a duty to contest claims which the Company might not have deemed itself under duty to contest, while on the other hand it enabled him to recognize, as the Company might not have recognized, the merit of claims otherwise than by judicial command. The liquidator, as trustee for the creditors of the extinct Illinois company, represented interests that were not the same as those represented by the extinct company when it conducted its own business. In short, the Illinois liquidator was thus a stranger to the Missouri judgment and it cannot be invoked against him in Illinois. See *United States* v. *California Bridge Co.*, 245 U. S. 337; *Kersh Lake Dist.* v. *Johnson*, 309 U. S. 485. Indeed, to subject the assets of the Illinois liquidator to the claim of a judgment obtained against Lloyds in Missouri subsequent to the passage of those assets to the liquidator may well raise constitutional questions. *Riley* v. *New York Trust Co.*, 315 U. S. 343.

It is suggested that out-of-State creditors should be saved the burden of proving their claims in Illinois. Of course that is a proper consideration, and it would be controlling, where a creditor has obtained judgment, if there were no countervailing considerations. Against the claim of out-of-State creditors must be set not merely the interests of Illinois creditors, but also the importance of a unified liquidation administration, the burden to the

liquidator of defending suits anywhere in the United States, and the resulting hazards to a fair distribution of the estate. To require the face value of the Missouri judgment of the Missouri claimant to determine his share out of the Illinois fund might, of course, dilute the share in the Illinois assets that can go to legitimate Illinois claimants. Considering the primary and predominant relation of Illinois in the adjustment of these conflicting interests, considering, that is, that we are dealing with a creature of Illinois and the property of that creature within her bounds, neither the demands of fairness nor anything in the Constitution requires that the interests of the out-of-State creditors should control the Constitutional issue. The resolution of this conflict so that the out-of-State creditor must take his place with the Illinois creditors is another instance of a price to be paid for our federalism, and in this instance it is a very small price. If the situation calls for correction by a uniform regulation, Congress has the power to deal with the matter. Or the States might do so through the various devices for securing uniformity of State legislation. Illinois, in fact, has made overtures to its sister States in this regard. It has adopted the Uniform Reciprocal Liquidation Act as proposed by the Commissioners on Uniform State Laws. By this Act claims against insolvent Illinois insurance companies may be proved in ancillary proceedings in any "reciprocal state" Ill. Laws 1941, pp. 832–37, replacing Laws 1937, pp. 788–90, Smith-Hurd Ann. Stat. c. 73, § 833.3. That Missouri has not seen fit to protect the interests of Missouri creditors by becoming a "reciprocal state" is not the fault of Illinois.

A final word. It is suggested that this Court is merely deciding the finality of the Missouri judgment in Illinois, without any regard to its provability on a parity with the claims of Illinois creditors in the distribution of Illinois assets. But we are not merely passing on the abstract

status of the Missouri judgment. The only issue that has ever been in this case is the right of the Missouri claimant to participate in the Illinois assets on the basis of the face value of his judgment. Such was the claim made by the creditor; such was the claim disallowed by the liquidator; such was the claim rejected by the lower court, and such was the disallowance affirmed by the Supreme Court of Illinois. It has never been questioned that the thrust of the case was the opportunity of the Missouri judgment-creditor-claimant to compete with the Illinois claimants in the distribution of the estate not on the basis of the merits of his claim, but on the amount fixed by the Missouri judgment. Neither by any of the courts nor by any of the parties was any suggestion made that under Illinois law the Illinois creditors have priority to exhaust the Illinois assets. What was before that court and what is before this Court is whether a Missouri claimant may share in the distribution of a common fund not on the basis of a claim established according to a uniform procedure but on the basis of a judgment secured in Missouri subsequent to the passing of that fund to the Illinois liquidator.

This is not to say that the Missouri judgment is invalid. Whether recovery may be based on this judgment in Missouri, or in any other State except Illinois, or even in Illinois should the assets go out of the State's hands and return to a reanimated Chicago Lloyds, are questions that do not now call for consideration.

The judgment should be affirmed.